

Once a mosque
always a mosque

مسجد ایک جگہ تعمیر کیے بعد
ابد الابد تک مسجد رہتی ہے

1997 M.L.D. 299

انیم فیصلہ مسجد کیس - ضلع چیری لاہور
(مسجد ضلع چیری لاہور) ماکستان

1997 M L D 299

[Lahore]

Before Mian Nazir Akhtar, J

HAQ NAWAZ and others---Petitioners

versus

PROVINCE OF THE PUNJAB through Chief Secretary,
Civil Secretariat, Lahore and 2 others---Respondents

Writ Petition No.9487 of 1992, decided on 13th August, 1996.

M.L.D

(a) Constitution of Pakistan (1973)---

---Art. 199---Civil Procedure Code (V of 1908), O.VIII, R.10---Constitutional petition---Written statement---Respondent (Provincial Government) had not submitted any written statement to controvert the facts stated in the petition or the documents relied upon by the petitioners---Respondent, held, would be deemed to have admitted the correctness of the facts and the documents placed on record by the petitioners. [p. 311] A

(b) Muhammadan Law---

---Wakf---Mosque---Status and sanctity attached to mosque elaborately stated with reference to Qura'nic Verses; Traditions of the Holy Prophet (s.a.w.s.) and authoritative works. [pp. 318, 324, 330] B, C, D & E

(c) Islamic Jurisprudence---

---Shaairallah---Meaning and concept of Shaairallah stated---All mosques wherever situated fall within the meaning of expression "Shaairallah"---Mosques being permanently dedicated in the name of God, are used by Muslims in accordance with His commands for offering prayers and glorifying His name and they are not only included in Shaairallah but also belong to their upper strata and deserve unconditional respect and have to be properly maintained and protected.---[Words and phrases]. [pp. 330, 331, 334] F, G & H

(d) Muhammadan Law---

---Wakf---Dedication---Implied consent---Mosque---Site belonging to Provincial Government was being used for offering prayers for the last so many decades---Provincial Government had never objected to the use of the site as a mosque---Held, it clearly implied the consent to dedicate the property as a Wakf for a mosque. [p. 334] I

(e) Muhammadan Law---

---Wakf---Mosque---Title---Mosque being a kind of Wakf, all rules of Islamic Law governing creation of Wakf were equally applicable thereto---No particular form is prescribed under the law for creating Wakf, hence Wakf can be made verbally or in writing or treated to have been made through long user of the property for the purpose of mosque---Dedication of the property whether made expressly or impliedly or by long user, extinguishes the title of the original owner.

Mosque is a kind of Wakf and all rules of Islamic law governing creation of Wakf are equally applicable thereto. Ordinarily, a Wakf is created by permanent dedication of a property lawfully owned by a person for any purpose recognised under the Islamic Law, as religious, pious or charitable. No particular form is prescribed under the law for creating Wakf. Hence it may be

made verbally or in writing or be treated to have been made through long user of the property, for the abovementioned purposes. [p. 334] J

Therefore, the dedication of the property whether made expressly or impliedly or by long user, extinguishes the title of the original owner. [p. 335] K

f) Muhammadan Law---

---Wakf---Mosque---Provincial Government had consciously allowed the site to be used as a mosque for an indefinite period and it was actually used as a mosque for offering five times daily prayers for a very long time---Government, later on, had announced its policy to allocate or dedicate the land for mosques free of cost, contributed funds partly and called upon Muslims to contribute the remaining funds for construction of Pacca mosques---Muslims acted upon the policy/representation made by the Government, contributed the desired amount of cost of construction and a Pacca mosque was constructed with the consent and active assistance of the Government---Held, site became a Sharee mosque and Government could not come forward to state that no Sharee mosque existed at the site. [p. 339] L

g) Muhammadan Law---

---Wakf---Mosque---Sharee mosque---Estoppel---Mosque was constructed with the express approval of the Government for which it had partly contributed funds---Held, Government was estopped by its own conduct to change its stand and assert that no such Sharee mosque existed at the site particularly after the lapse of more than 50 years during which the building of the mosque remained in existence---Qanun-e-Shahadat (10 of 1984) Art.114.---[Estoppel]. [p. 341] M

h) Muhammadan Law---

---Wakf---Creation of---Effect---On creation of Wakf, the property immediately and irrevocably vests in Allah and cannot be put to any use other than the one for which the Wakf was created. [p. 341] N

i) Muhammadan Law---

---Wakf---Mosque---Once a person converts his land into a mosque he can no longer revoke the Wakf. [p. 342] O

j) Muhammadan Law---

---Wakf---Mosque---Title---Mosque is purely for God and no one else has any title in it and rights of all others qua mosque are extinguished---Mosque cannot be sold or inherited. [p. 343] P & Q

(k) Muhammadan Law---

---Wakf---Creation of---Mosque---Permission granted by owner whether a person, an institution or a Government, expressly or impliedly, to use a piece of land for offering prayers indefinitely and thereafter actual user of the property by Muslims generally for the said purpose, without any objection by the owner, would create valid Wakf and extinguish title of the owner---To convert a piece of land into a mosque it is not necessary that a particular type of building, dome or Minars be constructed thereon but it is the site dedicated for mosque or deemed to be so dedicated by long user which becomes mosque---As a result of permanent dedication of land for mosque, the site becomes a mosque. [pp. 344, 345] R & S

(l) Muhammadan Law---

---Wakf---Mosque---Sanctity---Mosques belong to God, must be properly maintained, permanently preserved and fully respected as being symbols of God---Shifting the site of mosque---Not recognised in Islam---Once a site lawfully becomes a mosque then it always remains a mosque---Even if a mosque is spoiled, deserted or demolished for any cause or wrongly put to any use other than the worship of God, still it remains a mosque.

The concept of shifting the site of a mosque is not recognised in the Islamic Law and Jurisprudence. Once a site lawfully becomes a mosque then it always remains a mosque. Mosques belong to Allah, must be properly maintained, permanently preserved and fully respected as being symbols of Allah. Even if a mosque is spoiled, deserted or demolished for any cause or wrongly put to any use other than worship of Allah, still it remains a mosque. [p. 345] T

Mosques belong to Almighty Allah exclusively and cannot be sold, gifted, mortgaged, exchanged or inherited and have to be permanently maintained, protected and preserved at the original sites. The element of permanence preserves the spirit of sanctity of mosques. The concept of shifting from one place to another is relevant only in respect of movable property, persons, cattle and chattels etc. The land or site of a mosque or house is fixed in the earth and it is humanly impossible to remove it from there and graft it elsewhere. Even in case of alienation of an ordinary immovable property through sale, exchange, gift or inheritance only the title is transferred from one person to another but the property remains at its original place. At the most, the built up structure can be demolished and the Malba removed from the site. [p. 346] U

The necessary corollary of the principle "once a mosque always a mosque" is that the site of a mosque remains Wakf perpetually which can never be abandoned, alienated or put to any other private or public use. The abandonment of a mosque is strongly condemned by Almighty Allah in Verse

No.2/114. Even if a mosque is demolished or becomes deserted due to shifting of the population or for any other cause, it remains a mosque and its sanctity has to be preserved as per the Injunctions of the Holy Qur'an and traditions of the Holy Prophet. (s.a.w.s) [p. 346] V

A mosque differed from other Wakf properties and could not be sold even if it was spoiled and the population of the area or the city had shifted from there; that the place would remain a mosque because human ownership qua it had ended and its title vested in Almighty Allah. [p. 347] W

(m) Muhammadan Law---

---Wakf---Mosque---Sanctity---Mosque or a building called or built as a mosque can be demolished---Circumstances and reasons justifying demolition of a mosque enumerated. [p. 350] X

(n) Islamic Jurisprudence---

---Tradition of the Holy Prophet (s.a.w.s.)---Sanctity---Held, in presence of a clear tradition of the Holy Prophet (s.a.w.s.), the views of a companion of the Holy Prophet or any Muslim jurist are not to be preferred over the same. [p. 365] Y

(o) Constitution---

---Object of Constitution of a State briefly stated.

The Constitution of a State is not a book of prayers to be read only for "Baraka". It contains fundamental principles and the law governing it and provides the criteria for the construction, interpretation and validity of legal enactments on the consideration of their conformity to the fundamental principles and the law. The Constitution contains provisions relating to the concept, character and objectives of the State, the nature and framework of the Government as well as provisions to regulate, distribute and limit the functions of its different departments, the extent and manner of exercise of its sovereign powers for achieving the aspirations and ideals of its people. [p. 371] Z

(p) Constitution of Pakistan (1973)---

---Art.2---Meaning and purpose of Art.2 of the Constitution.

According to Article 2 of the Constitution, the State religion of Pakistan is Islam. This Article being a substantive part of the Constitution, certainly has a meaning, purpose and practical utility. It is singularly different from an empty slogan. The purpose is to declare unequivocally that in the State of Pakistan, the Islamic way of life shall be followed and that it shall be governed in accordance with the Islamic Sharia. [p. 372] AA

(q) Constitution of Pakistan (1973)---

---Art.2A & 8---Intent and interpretation of Art. 2A of the Constitution--- Principles enshrined in Objectives Resolution are intended to be given effect to by the three organs of the State i.e. the Executive; the Legislature and the Judiciary---Court need not confine itself to the precise language employed in the Objectives Resolution but must ascertain the true intent of the law-makers and give effect to the same---Laws inconsistent with the Injunctions of Islam are void on basis of Art.2-A---Superior Courts can competently examine the validity of manmade laws and actions of State functionaries on the basis of Injunctions of Islam.

The ideals of establishing a truly Islamic State and society were embodied in the historic Objectives Resolution adopted by the constituted Assembly of Pakistan on 12-3-1949. At one time, it was only a part of the preamble of the Constitution and was not enforceable. [p. 372] BB

Although, the heading of the Article says that "Objectives Resolution is to form part of substantive provisions", in the operative part, the principles and provisions set out therein were really made substantive part of the Constitution. It was added that the said principles and provisions "shall have effect accordingly". The principles and provisions set out in the Objectives Resolution are that sovereignty over the entire universe belongs to Allah alone; that the State of Pakistan shall exercise the authority delegated by Allah within the limits prescribed by him, that the said authority is a sacred trust; that the sovereign State of Pakistan shall be governed by a Constitution; that the State power and authority shall be exercised through the chosen representatives of the people; that the principles of democracy, freedom, equality, tolerance and social justice as enunciated by Islam shall be observed; that Muslims shall be enabled to order their lives in the individual and collective spheres in accordance with the teachings and requirements of Islam as set out in the Holy Qur'an and Sunnah; that the citizens of Pakistan shall have fundamental rights qua equality of status, equality of opportunity, equality before the law, social, economic and political justice, freedom of thought and expression, belief, faith, worship and association (subject to law and public morality), the minorities shall have adequate freedom to profess and practise their religion and develop their cultures, the legitimate rights of the minorities shall be safeguarded, the independence of judiciary will be fully secured; the integrity of the territories of the Federation of Pakistan, its independence and all its sovereign rights, over sea and air shall be safeguarded. By adding Article 2A, the Constitution-maker clearly intended that the above-referred principles and provisions be given effect to by the three organs of the State, i.e. the Executive, the Legislature and the Judiciary. Court need not confine itself to the precise language employed in the Resolution but must ascertain the true intent of the law-maker and give effect to the same. [p. 372] CC

The intention behind Article 2A was to elevate the Objectives

Resolution from the position of a mere "pious wish" to the higher pedestal of substantive Constitutional law, thereby making the Injunctions of Islam as the supreme law of the land. Hence, the change was real and purposeful. Therefore, instead of finding fault with the language employed in the Objectives Resolution, Court should adopt "purposeful approach" to give effect to the legislative intent. [p. 373] DD

Notwithstanding the fact that in the changed circumstances a few words and expressions used in the Objectives Resolution appear to be inapt, on reading it as a whole, its real intention can be gathered and given effect to. If an object contemplated therein had been achieved before insertion of Article 2A, as for example, the Constitution had been framed or a democratic political set-up established, fundamental rights secured in the Constitution, then a fresh exercise to frame another Constitution or establish a new political order or provide fundamental rights was not required. However, the principles deducible from the Objectives Resolution have always to be adhered to by the citizens and the State functionaries. One of the important principles embodied in the Resolution is that the sovereignty over the entire universe belongs to Allah alone and that the State of Pakistan shall exercise its powers and delegated authority through the chosen representatives of the people within the limits prescribed by Almighty Allah. It is important to distinguish between the Constitution and the principles which underline it. The principles are in one sense more important than the Constitution itself. The form of the Constitution changes but the principles remain. Therefore, the principle of sovereignty of Allah and obligation of the Legislature to act within the limits of Allah has always to be followed. [p. 373] EE

In Pakistan, the members of the Parliament are not the monarchs of all that they survey. They can frame laws while remaining within the four corners of the Islamic Shariah to enable Muslims individually and collectively to order their lives in accordance with the teachings of Islam as set out in the Holy Qur'an and Sunnah of the Holy Prophet (s.a.w.s.). [p. 375] FF

When it is said that after insertion of Article 2A in the Constitution the principles and provisions of the Objectives Resolution including Injunctions of Islam, have become substantive part of the Constitution, the status or authority of Injunctions of Islam is not relegated to that of manmade laws. The Injunctions of Islam as set out in the Holy Qur'an and Sunnah of the Holy Prophet (s.a.w.s.) are the supreme law of the land and all manmade laws have to conform to the same. It is significant to mention that laws inconsistent with fundamental rights guaranteed under the Constitution are void by virtue of the provisions of Article 8 of the Constitution. Therefore, it can be ruled without any hesitation that laws inconsistent with the supreme law of the land, i.e. Injunctions of Islam, are also void. [p. 375] GG

A real change has been made after insertion of Article 2A in the

Dates of hearing: 14th, 16th; 27th, 30th November; 10th, 18th December, 1995 and 20th, 26th and 29th May, 1996.

JUDGMENT

This judgment will dispose of Writ Petitions Nos.9487/92 and 10545/92 in which common questions of law and facts are involved.

2. The dispute relates to the mosque situated on the Northern side of the Office of the Deputy Commissioner, Lahore at the premises of District Courts, Lahore. It was demolished on 6-10-1992. At that time, Mr. Javed Mahmood was the Deputy Commissioner, Lahore who was also Chairman of the Managing Committee of the mosque. The mosque was being used for offering five times daily prayers, the Juma and Eid prayers by the members of the staff from the office of Deputy Commissioner, Lahore, the Advocates and other Muslims since long. The Provincial Government to whom the site belonged never objected to it. The site was converted into a Tharra long before the partition and was regularly used for offering five times prayers daily. After creation of Pakistan a general policy was laid down to provide mosques at the premises of District Courts in the Province of Punjab. For this purpose, the Government decided to provide free land as well as funds for construction of a Pacca mosque at the site. The mosque was constructed somewhere in the year 1961. Muslims continued to use the mosque for daily prayers, Jumma prayers and even the Eid prayers. In the year 1982 "Madrisa Hifzul Qur'an" was also established in the mosque in pursuance of a decision of the Managing Committee. In the year 1989 the District Management started renovation and reconstruction of the buildings existing at the District Court's premises. In the process, some buildings including residential quarters and shops were demolished whereupon one shop-keeper named Muhammad Boota filed Writ Petition No.4586/92 in this Court. The Court called parawise comments from the Deputy Commissioner, Lahore who stated therein that in continuation of development scheme the next proposal was to reshape the corner of the District Court's premises in consultation with TEPA and that it was decided to demolish the tubewell, mosque, post office and quarters and to redesign and reconstruct the same. When the lawyers and the residents of the locality learnt that the mosque was also going to be demolished, a number of delegations from the local Bar Association and the general public met the then Deputy Commissioner, Lahore (who was Chairman of the Managing Committee of the mosque). He assured them that the mosque would not be demolished. The assurance given by the Deputy Commissioner was highlighted in a number of news items published in different newspapers of Lahore on 3-10-1992. The general public and the lawyers felt satisfied with the official assurance but it turned out to be a mere farce because the mosque was razed to the ground on the night between 5th and 6th October, 1992 and Malba of the mosque was hurriedly removed from the site before dawn of the day. The news of demolition of mosque shocked the citizens who strongly condemned the action and started agitation against the Deputy Commissioner and other persons

responsible for demolishing the mosque. The members of the District Bar Association also protested. Kh. Muhammad Sharif Advocate, Ex-President of the District Bar Association, Lahore and Councillor of the area alongwith a number of other advocates sent a telegram of the following contents to the Chief Minister, Punjab and others:--

"We the undersigned advocates and ex.office-bearers of the Lahore District Bar Association highly protest and condemn the un-Islamic and illegal act of the Deputy Commissioner, Lahore for demolishing the District Courts' mosque of more than 75 years old wherein at least 150 students were studying Qur'an and Fiqah. This un-Islamic and illegal act of the Deputy Commissioner, Lahore is not only liable to be condemned but also amounts to conspiracy against the present Government and it has made it clear that he has joined hands with anti-Government elements to create law and order situation. You are requested to take serious notice of the same and immediate necessary action against the D.C., Lahore, otherwise the present Government will be in great trouble."

(A copy of the telegram is available at page 21 of File No.3 from the Office of Deputy Commissioner, Lahore). An organisation known as Movement for Protection and Construction of Jamia Mosque, District Courts, Lahore was also formed to protest against the demolition of the mosque and have it reconstructed at its original site. It sent petitions to the then Prime Minister of Pakistan and other high officials. (A copy of the petition is contained at pages 39 to 41 in File No.3, from the Office of Deputy Commissioner, Lahore). Among other things it was stated therein:---

"مسجد کی منتقلی ایک ایسی مذموم، نازیبا اور بے دین حرکت ہے جو کہ دنیا بھر میں اسلام پر ضرب کاری ثابت ہوگی۔ دنیا بھر میں غیر مسلم جب ان کا جی چاہے گا ہماری مساجد کو گرا دیں گے۔ ان کی جگہ جو ان کا جی چاہے گا بنادیں گے۔ مندر کے پاس مسجد نہیں چاہئے۔ گر جاگھر کے قریب مسجد نہیں چاہئے۔ مسجد کی جگہ جو خوبصورت پارک، سڑک یا خوبصورت عمارت چاہئے۔ مسلمان مسجد میں اذان دیتے اور نماز پڑھتے اچھے نہیں لگتے۔ تو مسجدیں دنیا بھر میں گرنی شروع ہو جائیں گی۔"

It was also mentioned therein that the Indian Radio had made comments regarding the controversy of Babri Mosque with reference to the demolition of the mosque located at District Courts, Lahore. At the end of the petition the then Prime Minister was reminded that he had built the house of a poor man with his own hands (Note: The scene was often telecast on the PTV), hence he should come forward to reconstruct the Jamia Mosque of District Courts at its original site. However, no effective step was taken by the Provincial and the Central Governments in the matter. Only a letter was written by Maulana Abdus Sattar Khan Niazi, the then Federal Minister for Religious Affairs, Government of Pakistan to the Commissioner, Lahore Division, Lahore, in which he expressed

grief over demolition of the mosque. He also stated therein that before demolishing the mosque the Deputy Commissioner should have consulted the Ministry for Religious Affairs. He added that the mosque be reconstructed at the same site as required by the Islamic Sharia. However, the needful was not done. (Copy of the letter is annexed at page 103 of File No.3 from the Office of Deputy Commissioner, Lahore).

3. The Indian Press and the electronic media is said to have highlighted the demolition of the Lahore mosque to incense the extremist Hindus to execute their plan of destroying the historic Babri Mosque. Accordingly, the said mosque was razed to the ground on 6-12-1992, just two months after demolition of the Lahore mosque. The news of demolition of the Babri Mosque came as a stunning shock to the Muslims throughout the world who raised a chorus of condemnation against it. The then Prime Minister of Pakistan Mian Muhammad Nawaz Sharif (now Leader of Opposition) strongly condemned the desecration and destruction of the Babri Mosque in these words: "This abhorrent act of extreme fanaticism deserves to be strongly condemned by all civilised countries, especially those which oppose religious intolerance and extremism and uphold human rights". Likewise, the present Prime Minister of Pakistan Mohtarma Benazir Bhutto (the then Leader of Opposition) described the event of razing of Babri Mosque by Hindu extremists as tragic and a day of mourning for Muslims the world over". She added, "This act of savagery has not only deeply hurt Muslims' sentiments but raised fundamental questions about India's proclaimed commitment to secularism. It is now imperative for Islamabad to respond to this barbaric act in a manner that reflects the anger and anguish of all Muslims".

("The News"-----Lahore Edition dated 7-12-1992). Unfortunately, Islamabad failed to rise equal to the task, both in the matter of destruction of the Babri Mosque as well as demolition of the Lahore mosque.

4. The present writ petition was filed on 7-10-1992 for declaring the demolition and shifting of the disputed mosque as being illegal, without lawful authority and of no legal effect and for a direction to the respondents to reconstruct the mosque at its original site.

5. The writ petition came up for hearing on 11-10-1992 when the learned Additional Advocate-General appeared in the Court and was allowed time to submit a report and parawise comments on behalf of the Deputy Commissioner, Lahore, respondent No.2, which were submitted on 18-10-1992. Paras. 2, 5 and 6 of the report contain material averments and are reproduced below for ready reference:---

"2. The members of the staff, officers and the Mosque Committee demanded that with the development of District Courts Compound, existing building of mosque does not fit in and as such demanded that a new well-designed mosque should be constructed which should be fully

air-conditioned, centrally heated, fitted with modern sound system, equipped with all arrangements to provide hot water in winter and cold drinking water in summer. They unanimously resolved and decided that the existing mosque should be demolished and instead a new mosque be constructed.

5. It has been established that the area under the demolished mosque was neither purchased by any body nor the Government had transferred it to any person. No "wakf" was thus created of any land for constructing mosque in the District Courts. The area under the premises of the mosque was owned by the Government. Under these circumstances, the mosque can be relocated which is being done after getting the land transferred in the name of District Mosque Committee.

6. The site of the demolished mosque shall not be converted for any other use including fountain, office building, carparking or any other purpose. The place would be clearly demarcated and would be decorated with grass, flowers and plants in order to maintain its sacrosanct nature."

On facts, it was stated in para. 6 of the parawise comments:---

"It was in pursuance of this demand of the staff that TEPA was consulted and whereafter old mosque was demolished and design of the new mosque was got prepared by Mr. Nayyar Ali Dadda, the well-known architect of the country."

In para. 7 it was stated:---

"The mosque has been demolished with a complete consensus of the staff, officers, Mosque Committee and Imam Masjid."

The petitioners submitted rejoinder to the report/parawise comments of respondent No.2 and attached a large number of documents showing grant of free land by the Government, permission to construct a mosque and allocation of funds by the Government to complete the mosque. The writ petition was admitted for regular hearing on 28-3-1994. The Provincial Government did not submit any written statement to controvert the facts stated in the petition or the documents relied upon by the petitioner. Hence, the Government respondent No.1, would be deemed to have admitted the correctness of the facts and the documents placed on record by the petitioner. The learned A.A.-G. prayed that the comments submitted by the Deputy Commissioner be treated as his written statement because he did not desire to add anything else.

6. Malik Allah Yar, learned counsel for the petitioners urged that originally the disputed place was in the shape of a plot which was being used by Muslims from times immemorial for offering prayers. Subsequently, it was converted into a Thara before the partition and Muslims continued to use it for

offering five times daily prayers. After partition, a mosque was constructed with express permission of the Government. The Government had laid down a policy to provide free land in the premises attached to Government buildings in the Province of the Punjab and financial assistance for the construction of mosques. Funds were also allocated by the Government to construct the mosque in dispute. It amounted to express permission by the Government and created a valid Wakf; that once the property became Wakf it could not be used for any other purpose; that mosque being house of Allah becomes a sacred place and deserves highest respect by all Muslims; that the site of the mosque could not be changed and the respondents were under an obligation to reconstruct the mosque at the same place and that by demolishing the mosque the respondents and all other persons engaged in the demolition of the mosque had committed an offence under section 295, P.P.C. for which a criminal case be ordered to be registered against them. He referred to a number of verses of the Holy Qur'an and traditions of the Holy Prophet (s.a.w.s.) regarding the status and exalted position of mosques. In support of his contentions the learned counsel referred to extracts from the following books:---

- (i). Kifayat-ul-Mufti.
- (ii) Fazaail-i-Masjid.
- (iii) Moarif-ul-Hadith.
- (iv) Fatawa-i-USmani.
- (v) Fatawa-i-Nazaria.
- (vi) Fatawa-i-Rashidia.
- (vii) Fafawa-i-Rizvia.
- (viii) Fatawa-i-Mazharia.

He also referred to the following judgments:

- (i) Umar Din and others v. Mst. Aihsan and others (AIR 1921 Lahore 303)
- (ii) Masjid Shahid Ganj and others v. Shromani Gurdwara Parbandak Committee, Amritsar (AIR 1938 Lahore 369).
- (iii) Ballabh Das and another v. Nur Muhammad and another (NLR 1991 SD 317).
- (iv) Anjuman Masjid-i-Farooqia and 3 others v. Mst. Fazal Begum and 3 others (1991 SCMR 2112).
- (v) Muhammad Yasin v. Rahmat Ilahi (NLR 1994 SD 442).

The learned counsel strenuously urged that the mosque was demolished as a

result of some deep conspiracy to support the move of the extremist Hindus in the matter of demolition of the Babri Mosque.

7. On one date of hearing, almost at the fag-end of the day, Dr. Khalid Ranjha, Advocate also addressed the Court on behalf of the petitioners briefly. He urged that once it was established that the mosque was lawfully constructed then the other question of shifting the mosque offered no difficulty because shifting of the premises of a mosque was not recognised under the Islamic Law. The case was adjourned to enable him to assist the Court fully but on the next date of hearing, he merely stated that he had nothing else to add.

8. Nawab Saeed Ullah Khan, learned counsel for the petitioners in W.P. No.10545/92 generally adopted the arguments raised by Malik Allah Yar, Advocate and added that the mosque at the premises of District Courts, Lahore was demolished by and at the instance of Deputy Commissioner, Lahore although he had himself assured the various delegations of lawyers and the general public that it would not be demolished; that the Deputy Commissioner had acted like an enemy agent; that the mosque was demolished on 6-10-1992 and thereafter the Babri Mosque was demolished on 6-12-1992; that by asserting that a new mosque would be built at another nearby place, an argument had been provided to the enemy that the premises of any mosque could be shifted elsewhere. He submitted that this was a dangerous act done by the Government and must be undone in the light of the Injunctions of the Holy Qur'an and Sunnah of the Holy Prophet (s.a.w.s) so that sanctity of the mosques could be preserved throughout the world.

9. Mr. Muhammad Ismail Qureshi, Advocate also appeared on behalf of the petitioners and generally adopted the arguments raised by Malik Allah Yar, Advocate. He emphasised that mosque is a sacred place entitled to highest reverence and could not be shifted to any other place. If the superstructure had become old and dangerous, it could have been pulled down and a new mosque rebuilt at the same place. He submitted that in the Holy Qur'an specific references were made to four mosques i.e. Baitullah at Makkah, Masjid-e-Nabvi and Masjid-e-Quba at Madina-tul-Munawwara and Masjid-al-Aqsa at Jerusalem. He pointed out that Masjid-i-Nabvi was the first residential University of Islam as a number of companions of the Holy Prophet (s.a.w.s.) used to stay in the mosque and get education directly from the Holy Prophet (s.a.w.s.). He urged that Muslims used to protect places of worship of non-Muslims even in war but non-Muslims including Christians and Hindus were out to destroy mosques even during peace time. In this connection he referred to a Khutba of Hazrat Abu Bakr Siddique, the first Caliph after the Holy Prophet (s.a.w.s.). He urged that demolition of the mosque in the Islamic State of Pakistan must be viewed seriously and a criminal case be ordered to be registered against the culprits.

10. The learned A.A.-G. submitted that the real controversy involved in the matter was whether the previous mosque could be demolished and thereafter

shifted to another suitable site. He added that this question necessarily involved the true status of the previous mosque. He urged that the original mosque was not a Shar'ai mosque and could be demolished and a new one be constructed at another site. He further submitted that the Fatawa (juristic opinions) obtained by the petitioners were not reliable because the same were not based on any original source. He submitted that even the respondents had obtained views of Muslim scholars before demolishing the mosque and the said views favoured the action taken by the Government. He submitted that in the absence of express dedication for religious purposes mere user of the place as a mosque would not give it the status of a Shar'ai mosque. In support of his contention, he referred to the opinion of the Federal Shariat Court given in response to the letter written by the Military Secretary to the then President of Pakistan (late General Zia-ul-Haq).

11. After the learned counsel for the parties concluded their arguments, the Court still needed further assistance and called four eminent Advocates namely Mian Saeed-ur-Rahman Farrukh, Dr. Riaz-ul-Hassan Gilani, Mr. Nazir Ahmad Ghazi and Malik Muhammad Nawaz, as *amicus curiae*.

12. Mian Saeed-ur-Rahman Farrukh, Advocate urged that the site of a mosque cannot be changed under any circumstance. He submitted that once it was admitted that an existing mosque could be demolished and instead another one built at another place then no mosque in the world would be safe. The structure, if need be, could be changed or rebuilt but the site could not be changed for any consideration whatsoever. He submitted that the facts on the record clearly established that the piece of land at the District Court premises, Lahore was dedicated by the Government free of cost on which the mosque was constructed with active help of the Government. The Deputy Commissioner was the Chairman of the Managing Committee and it did not lie in his mouth to assert that the mosque was constructed without permission of the Government. He pointed out that the Deputy Commissioner was conscious that the original site was mosque. That is why he has stated in the comments that sanctity of the plot would be preserved. Therefore, he was bound to reconstruct the mosque at the original site and if need be, a second mosque could be constructed at the other site now proposed in the site plan. He pointed out that the respondents first demolished the mosque on 6-10-1992 and thereafter obtained some Fatawa in mid-October, 1996 after institution of the writ petition in this Court and that too, without disclosing correct facts. Hence, the said Fatawa had no legal value.

13. Dr. Riaz-ul-Hassan Gillani, Advocate urged that building site is the mosque and the construction raised thereon was only meant to provide convenience for offering prayers. Once it is established that a piece of land has been dedicated by the owner for a mosque, it goes out of his ownership and becomes a mosque even without the superstructure. After dedication the nature and character of the land undergoes a change. It becomes a house of Allah on which the blessings of Allah are showered. In this connection he referred to the

Verse No.1 in Chapter No.17 of the Holy Qur'an. He submitted that the "Baraka" mentioned in the Verse in respect of Al-Aqsa mosque in fact pertains to every other house of Allah. He submitted that after a premises is converted into a mosque, it becomes a sacred place and every Muslim is duty bound to preserve and maintain its sanctity. He further submitted that shifting of the premises of mosque is against the Sunnah of the Holy Prophet (s.a.w.s.). After Hijrah, the Holy Prophet (s.a.w.s.) came to the Holy Kaaba for performance of Hajj and Umra although it was in occupation of the enemy. This was done because there was absolutely no concept of shifting the mosque, hence the premises of the Holy Kaaba or Masjid-i-Nabvi or for that matter any other mosque can never be shifted. He pointed out that the book "Ibaat-ul-Matwari" written by Aala Hazrat Ahmad Raza Khan Brelvi, is an important book on the subject which may be kept in view while deciding the matter.

14. Mr. Nazir Ahmad Ghazi, Advocate, addressed arguments on various legal and factual controversies involved in the matter. He submitted that the facts borne on the record clearly showed that initially dedication of the property by the Government was implied and thereafter it became express when the Government offered free land and also contributed funds for construction of the mosque. Now, the Government was estopped by its own words and conduct from asserting that the property was not dedicated for a mosque. In this connection he placed reliance on the judgments in the following cases:

- (i) Massu and 27 others v. United Bank Limited and another (1990 MLD 2304);
- (ii) Allah Banda v. Mst. Khurshid Bibi etc. (1990 CLC 1683); and
- (iii) Mst. Kameez Fatima v. Wali Muhammad and another (PLD 1993 Supreme Court 901).

He further submitted that while submitting parawise comments, respondent No.2 had deliberately suppressed true facts and did not disclose the correspondence showing grant of free land and funds by the Government and the sanction obtained from the Lahore Corporation for construction of the mosque. This was clearly a mala fide act on the part of respondent No.2. He submitted that the Government had obtained Fatawa after demolishing the mosque without disclosing all the relevant facts, hence the same had no value in the eye of law. He submitted that the original site had lawfully become mosque which could not be demolished or shifted to another place. He urged that by virtue of the provisions of Articles, 2, 2A, 20 and 31 of the Constitution of Pakistan and the Enforcement of Shari'ah Act, 1991, all State functionaries were bound to act in accordance with the Islamic Shari'ah and preserve and maintain mosques. In this connection he relied on the cases "Zaheer-ud-Din and others v. The State and others" (1993 SCMR 1718) and Zahid Farooq and another v. Anjuman Jamia Masjid and 4 others (1995 SCMR 1584). He also referred to "Tafseer-i-Kabeer"

by Fakhar-ud-Din Razi, Al-Durrul Mukhtar, Al-Mughni, Hedaya, Bahr-ur-Raiq and Fiqh Al-Sunnah to urge that once the owner allows a place to be used for offering prayers and the place is actually used for the said purpose, then the owner cannot subsequently assert that the mosque was not lawfully constructed. He submitted that the general reputed that a place is mosque or Wakf strongly weighs in favour of the view that it is lawful mosque or wakf. If in each case documents showing express dedication are required, then the old Wakfs or mosques could not be preserved because documents are not available in case of old mosques or Wakfs. He strenuously urged that the mosque is a sacred place and its sanctity ought to be preserved by every Muslim. Referring to the Traditions of the Holy Prophet (s.a.w.s.) he submitted that on the Day of Judgement when everything in the universe would be destroyed, mosques would be taken to paradise (Jannah). He urged that by demolishing the mosque the respondents had intentionally insulted the religion of Islam and thus committed an offence under sections 295, 295-A and 297 of the P.P.C. for which a criminal case be ordered to be registered against the culprits

15. Malik Muhammad Nawaz, Advocate submitted that the mosque had come into being before the creation of Pakistan and the respondents had absolutely no right or justification to demolish it even with the apparently laudable object of building another mosque at some distance; that the freedom of worship guaranteed under Article 20 of the Constitution of Pakistan has been violated because by demolishing the mosque the respondents have deprived the staff, the lawyers and general Muslims from offering prayers in the mosque; that the respondents were perhaps interested in demolishing the mosque and did not take steps for construction of another mosque; that it was falsely stated in the comments that map of the new mosque had been prepared by the famous architect Nayyar Ali Dada and that its sanction had been obtained; that no such plan was either prepared by Nayyar Ali Dada or got approved by the respondents; that by virtue of Enforcement of Shari'ah Act, 1991 the State functionaries were also bound to submit completely to the Injunctions of Holy Qur'an and Sunnah of the Holy Prophet (s.a.w.s.) that the concept of the shifting of the mosque, if accepted, then Baitullah in Makkah, Masjid-i-Nabvi in Medina and Masjid Al-Aqsa in Jerusalem will not be safe. He submitted that during the period of the Holy Prophet (s.a.w.s.) only Masjid Zarar was ordered to be razed to the ground because it was not really built for offering prayers but was meant to create division in the Muslim Ummah and for hatching conspiracies against them. He submitted that even the house of an ordinary person could not be illegally demolished muchless the house of Allah. He submitted that during the reign of the Second Caliph Hazrat Umar (r.a.a.) only one incident was reported in which the mosque and Baitul Maal, were adjacent, a theft was committed in the Baitul Maal, whereupon Hazrat Umar (r.a.a.) ordered that Baitul Maal be established towards Qibla of the mosque and the mosque be shifted. However, he urged, in the case in hand, there was no Shar'ai justification for shifting the mosque. As regards the "Fatawa", he urged that for

obtaining a "Fatwa" first of all there must be "Fiqh-ul-Waqia" and then "Fiqh-ul-Ahkam" to be followed by the formal "Fatawa". In the present case the "Fatawa" obtained by the Government did not disclose true facts to enable the relevant "Ulema" to give a proper "Fatwa".

16. The case was fixed for re-hearing on 20-5-1996 when arguments were again heard, particularly regarding the incident of theft in Bait-ul-Maal at Kufa and alleged shifting of mosque under the orders of Hazrat Umar (r.a.a.). On behalf of the petitioners, Malik Allah Yar and Nawab Saeedullah, Advocates addressed arguments while Mr. Ehsan Sabri, learned A.A.-G. appeared and argued on behalf of the respondents. Mr. Riaz-ul-Hassan Noori (Jurist Consult of the Federal Shariat Court) was also called upon to assist the Court as an amicus curiae. He rendered valuable assistance to the Court; particularly in respect of the narrations about the theft in Bait-ul-Maal at Kufa and the letter said to have been written by Hazrat Umar (r.a.a.) regarding the alleged shifting of the mosque. He cited a large number of books to show that the narrations contained in the history book of Tabri and the Fatawa by Imam Ibn-e-Taimia were not reliable and that even otherwise the same did not establish that the mosque was actually shifted elsewhere.

17. Notice was also issued to Mr. Javaid Mahmood, Ex-Deputy Commissioner, Lahore who was the Chairman of the Mosque Committee at the relevant time. His learned counsel (Mr. Farooq Bedar, Advocate) addressed arguments regarding the petitioners' prayer for registration of a criminal case against the persons responsible for illegal demolition of the mosque. In this connection, he urged:---

- (i) the provisions of section 295 of the P.P.C. are attracted only if the act of demolition of a place of worship is done with the intention of insulting the religion of any class of persons or with the knowledge that any class of persons was likely to consider demolition of the mosque as an insult to their religion. The Ex-Deputy Commissioner being Muslim never wanted to demolish the mosque with such an intention. Similarly he could not know that Muslims would treat his act as an insult to their religion;
- (ii) the old mosque was demolished with the intention of rebuilding another beautiful mosque at a better place with better amenities for the Namazis;
- (iii) that the Ex-Deputy Commissioner not being a religious scholar could not know the intricacies of Islamic Law in the matter of demolition and shifting of the mosque;
- (iv) that the Ex-Deputy Commissioner is not responsible alone and many other persons were involved in the matter. Hence, only the Ex-Deputy

Commissioner be not singled out in the matter of registration of a criminal case;

- (v) that during the course of hearing of the case at one stage the Ex-Deputy Commissioner had appeared before the Court and stated that no body would be prevented from offering the prayers at the original site of the mosque; and
- (vi) that if this Court feels that the petitioner has committed any mistake, his client offers his apology and begs to be foregiven.

18. In reply, Malik Allah Yar, Nawab Saeedullah Khan and Nazir Ahmad Ghazi, Advocates urged that before demolition of the mosque, several delegations consisting of the Lawyers, Ulema and the general public had called on the Ex-Deputy Commissioner and requested him that the mosque be not demolished or shifted as such an act would be violative of the Injunctions of Islam and an insult to their religion. Malik Allah Yar, Advocate stated that as a member of the Lawyers' delegation, he had personally met the Ex-Deputy Commissioner and asked him not to demolish the mosque as it would injure feelings of Muslims who would treat it as an insult to their religion. The Ex-Deputy Commissioner assured the delegates that the mosque would not be demolished but during the night between 5th and 6th October, 1992 the mosque was secretly demolished and the Malba removed before dawn of the day. They added that a video film regarding demolition of the mosque was prepared during the night and its copy provided to India which was telecast on the Indian T.V. Moreover, news items regarding demolition of the mosque appeared almost in all the Indian newspapers. This clearly showed that the mosque was demolished with mala fide intentions in conspiracy with foreign elements for providing a reasonable pretext for demolishing the Babri Mosque. They further submitted that the local administration did not allow any body to use the old site of the mosque for offering prayers and even registered cases against those who tried to say prayers there.

19. A mosque is "House of Allah" which is used by Muslims mainly as a place for community worship of Almighty Allah. "The word "mosque" is derived from the Arabic 'Masjid', meaning literally the place of prostrations and the building it describes serves both as a house of worship and as a symbol of Islam" ("The Mosque", edited by Martin Frishman and Hasan-ud-Din Khan, Prefacer, page 11, published by Thames and Hudson Ltd., London). The status and sanctity of this institution is closely linked with the supreme importance of "Salaat" or prayer in the religion of Islam. It is an obligatory duty to be performed by Muslims at fixed times/hours during day and night. In this connection, the injunction of the Holy Quran is:---

ان الصلوة كانت على المؤمنين كتابا موقوتا (سوره نسا 15)

Muslims gather together in mosques five times in a day.

the day of Juma-tul-Mubarik) to offer prayers in congregation. Prayer is the pillar of Din and the most attractive style of the Islamic life. It demonstrates man's surrender to God and his defiance of the Devil who had vowed to stray him away from the path of virtue and obedience of the Creator. The Holy Qur'an contains about one hundred Verses regarding the need, worth and value of prayers and the obligation of Muslims to establish the system of "Salaat". In this connection, Allama Shibli Naumani writes:---

”یہ اسلام کا وہ فریضہ ہے جس سے کوئی مسلمان تنفس جب تک اس میں کچھ بھی ہوش و حواس باقی ہے کسی حالت میں بھی سبکدوش نہیں ہو سکتا۔ قرآن پاک میں سو مرتبہ سے زیادہ اس کی تعریف اس کی بجا آوری کا حکم اور اس کی تائید آئی ہے۔ اس کے ادا کرنے میں سستی اور کاہلی نفاق کی علامت اور اس کا ترک کفر کی نشانی بتائی گئی ہے۔“

(سیرت النبی ﷺ، جلد پنجم، صفحہ 70)

According to the traditions of the Holy Prophet (s.a.w.s.) "Salaat" is the top-most act of virtue which eliminates sins of a believer (Mishkat, Vol I, Chapter of "Salaat", pages 126 to 129). The system of "Salaat" is established in mosques which being symbols of Allah are loved and respected by Muslims. A Muslim who cultivates the habit of prostrating before Allah in prayers becomes mentally and spiritually prepared to obey His commands in every walk of life.

20. After migration to Madina, the Holy Prophet Hazrat Muhammad (s.a.w.s.) got a mosque built at Quba, a place about 3 miles away from Madina. He personally took part in the construction work to demonstrate the supreme importance of the House of Allah. After staying at Quba for about a fortnight, the Holy Prophet (s.a.w.s.) reached Madina and first of all got Masjid-e-Nabvi constructed adjacent to his house. The site where the mosque was constructed belonged to two orphans who willingly offered it without claiming any price but the Holy Prophet (s.a.w.s.) preferred to purchase it on payment of proper price to the owners. Again, the Holy Prophet (s.a.w.s.) personally participated in the construction work, like his companions. During the period of the Holy Prophet (s.a.w.s.) and his four Caliphs, Masjid-e-Nabvi remained the centre of Muslims' religious, social, educational and military activities. It is said to be the first residential University of Islam where a number of companions of the Holy Prophet (s.a.w.s.) used to stay at "Suffa" -- an elevated platform, and get education from the Holy Prophet (s.a.w.s.). In this way, a number of preachers were prepared who rendered valuable services in spreading the message of Islam. Generally all mosques, apart from being places of worship, are centres of religious teachings and learning. The elementary education of reading and reciting the Holy Qur'an is imparted invariably at every mosque.

20-A. Muslims treat it as an act of great virtue to construct, maintain and respect mosques. With the growth of Islam, number of mosques has

increased throughout the world. Martin T. Frishman and Hasan-ud-Din Khan say:

"Today, Islam is the fastest growing major monotheistic religion, and consequently more mosques are being built than are new places of worship for the followers of any other faith."

("The Mosque", Preface, page 14).

They add:

"A factor that should be borne in mind is that in modern society the mosque serves as the single most important visible representation of Muslim identity and values."

21. Apart from representing the Muslim identity and values, mosques also signify the inherent strength of the Muslim Ummah, its determination to live and abide by the commands of Allah and his Holy Prophet (s.a.w.s.). To the staunch opponents of Islam, mosques appear to be embodiments of Islamic fundamentalism which they are not prepared to tolerate. Hence, they always endeavour to desecrate, demolish and destroy mosques.

22. The Holy Qur'an contains specific Verses about four mosques, i.e. the Holy Kaaba, generally known as Baitullah, Masjid-e-Nabvi, Masjid Al-Aqsa and Masjid-e-Quba. In Sura Al-Imran, Verse No.96 and Sura Bani Israel, Verse No.1, it has been mentioned that blessings of Allah are showered in and around the holy mosques of Kaaba and Al-Aqsa. As mentioned above, mosques are symbols of God and all Muslims have been ordained to respect symbols of God and not to do any violence to the same (Sura Al-Haj, Verse No.32 and Sura Al-Maida, Verse No.2). Any one who stops the people from raising the name of Allah in a mosque and commits such acts as make mosques deserted places is condemned as "most unjust" in Sura Al-Baqra, Verse No.114.

23. Before proceeding further, it would be advantageous to reproduce some Verses of the Holy Qur'an to show the exalted status and importance of a mosque. In the Holy Qur'an Allah says:-

وان المسجد لله فلا تدعوامع الله احنا (سورة جن پاره 29 آیت 18)

"And the places of worship

Are for Allah (alone):

So invoke not anyone

Along with Allah;

(72/18)

واذ بانا لا يراهيم مكان البيت ان لا تشرك بى شيا و طهر بيتى للطالافين
والقالمين والركع السجود (سورة الحج ' پاره 17 آیت 26)

"Behold! We gave the site,
To Abraham, of the (Sacred) House,
(Saying): "Associate not anything
(In worship) with Me;
And sanctify My House
For those who compass it round,
Or stand up,
Or bow, or prostrate themselves
Therein prayer)." (22/26)

واذ جعلنا البيت مثابة للناس واما واتخذوا من مقام ابراهيم مصلى وعهدنا
الى ابراهيم واسماعيل ان طهرا بيتى للطائفين و العاكفين والركع السجود
(سورة البقرة 'پاره 1' آیت 125)

"Remember, We made the House
A place of assembly for men
And a place of safety;
And take ye the Station
Of Abraham as a place
Of prayer; and We covenanted
With Abraham and Ismail,
That should sanctify
My House for those who
Compass it round, or use it
As a retreat, or bow, or
prostrate themselves (therein
in prayer). (2/125)

ان اول بيت وضع للناس للذى ببكة مبركا وهدى للعالمين (سورة ال عمران
پاره 4 'آیت 96)

"The first House (of worship)
Appointed for men
Was that at Bakka:
Full of blessings
And of guidance
For all kinds of beings: (3/96)

فى بيوت ان الله ان ترفع ويذكر فيها اسمه يسبح له فيها بالغدو والاصل
(سورة النور 'پاره 18' آیت 36)

"(Lit is such a Light)
In houses, which Allah
Hath permitted to be raised
To honour; for celebration,

In them, of His name;
In them is he glorified
In the mornings and
In the evenings, (again and again)."

(24/34)

انما يعمر مسجد الله من امن بالله واليوم الآخر واقام الصلوة واتى
الزكاة ولم يخش الا الله فعسى اولئك ان يكونوا من المهتدين (سورة
توبه 'پاره 10' آیت 18)

"The mosques of Allah
Shall be visited and maintained
By such as believe in Allah
And the Last Day, establish
Regular prayers, and practise
Regular charity, and fear
None (at all) except Allah.
It is they who are expected
To be on true guidance."

(S. IX 18)

واقیموا وجوهکم عند کل مسجد وادعوه مخلصین له الدین کما بئاکم
تعودون (سورة الاعراف 'پاره 8' آیت 29)

"And that ye set your wholeselves (to Him)
At every time and place of prayer, and
Call upon Him, making your devotion sincere
As in His sight such as He created you
In the beginning, so shall ye return."

(S. VII V:29)

یبنی آدم خذو ذینتکم عند کل مسجد (سورة الاعراف 'پاره 8' آیت 31)

"O Children of Adam! Wear your beautiful apparel at every time and
place of prayer"

(S. VII V:31)

ومن اظلم ممن منع مسجد الله ان يذكر فيها اسمه وسعى في خرابها اولئك
ماكان لهم ان يدخلوها الا خائفين- لهم في الدنيا خزي ولهم في الآخرة عذاب
عظيم- (سورة البقرة 'پاره 1' آیت 114)

"And who is more unjust
Than he who forbids
That in places for the worship
Of Allah, Allah's name should be
Celebrated? - - whose zeal
Is (in fact) to ruin them?
It was not fitting that such
Should themselves enter them

Except in fear. For them
There is nothing but disgrace
In this world, and in the world
To come, an exceeding torment." (S.II. 114)

سبحن الذى اسرى بعبده ليلا من المسجد الحرام الى المسجد الاقصا الذى بركنه
خوله لنريه من ايتنا انه هوا السميع البصير - (سورة بنى اسرائيل ' پارہ 15'
آیت 1)

"Glory to (Allah)
Who did take His Servant
For a Journey by night
From the Sacred Mosque
To the Farthest Mosque,
Whose precincts We did
Bless, -- in order that We
Might show him some
Of Our Signs: for He
Is the One Who heareth
And seeth (all things)." (S.XVII.1)

ومن يعظم شعائر الله فانها من تقوى القلوب - (سورة الحج ' پارہ 17'
آیت 32)

"And whoever holds in honour
The symbols of Allah,
(In the sacrifices of animals),
Such (honour) should come truly
From piety of heart." (S.XXII 32)

ولو لا دفع الله الناس بعضهم ببعض لهدمت صوامع وبيع وصلوات ومسجد
يذكر فيها اسمه الله كثيرا ولينصرون الله من ينصره ان الله لقوى عزيز -
(سورة الحج ' پارہ 17' آیت 40)

".....Did not Allah
Check one set of people
By means of another,
There would surely have been
Pulled down monasteries, churches,
Synagogues, and mosques, in which
The name of Allah is commemorated
In abundant measure. Allah will
Certainly aid those who
Aid His (cause); --- for verily
Allah is full of strength,

Exalted in Might,
Able to enforce His (Will)."

(S.XXII V:40)

الذين ان مكنهم فى الارض اقاموا الصلوة و اتوا الزكوة و امرو بالمعروف و نهو
عن المنكر و لله عاقبه الامور- (سورة الحج ' باره ' 17 آيت 41)

"(They are) those who,
If We establish them
In the land, establish
Regular prayer and give
Regular charity, enjoin
The right and forbid wrong:
With Allah rests the end
(And decision) of (all) affairs."

(S.XXII V:41)

The above Verses make it abundantly clear that places of worship or mosques belong to Almighty Allah; blessings of Allah are showered on the site of a mosque; a mosque is to be sanctified, kept neat and clean and properly maintained to facilitate offering of prayers and raising the name of Allah therein, must be respected being symbols of Allah; that no one is greater wrongdoer or more unjust than the one who forbids people from worshipping Allah and celebrating his name therein, spoils a mosque or makes it a deserted place; and that had Allah not put a check at one set of people through another following different religions, then they would have definitely pulled down the monasteries, churches, mosques etc. Verse No.41 of Sura Al-Haj refers to the duty of rulers to establish mosques because the system of regular prayers has to be established in a mosque.

24. While interpreting Verse No.2/114 Allama Qartabi says:-

لا يجوز نقض المسجد ولا بيعه ولا تعطيله و ان خربت المحلة ولا يمنع
بناء المسجد الا ان يقصدوا الشقاق و الخلاف (الجامع الاحكام القرآن ' ج 2'
ص 78) (ناشر دار احياء التراث العربى - بيروت)

It means that a mosque cannot be demolished or sold or abandoned even if the Mohallah or residential area of its location becomes uninhabited and nobody will be stopped from constructing a mosque except where the object of the builder is to create division and differences (among Muslims). Such a mosque known in history as Masjid Zarrar was pulled down under the command of the Holy Prophet (s.a.w.s.) after revelation of Verses Nos.107 and 108 of Sura Tauba. It was not constructed with the object of worshipping Allah or glorifying His name but to create division in the Muslim Ummah and to hatch up conspiracies against them. To condemn the ignoble designs for which it was constructed, the site of Masjid Zarrar was converted into a filth depot under the orders of the Holy Prophet (s.a.w.s.). Imam Raazi explained

that mosques could be spoiled in two ways, firstly---by stopping the people from offering prayers, and secondly by making them deserted places or demolishing them (Vol.I, page 683). Obviously, the act of demolition of a mosque disables Muslims from offering regular prayers therein and clearly amounts to stopping them from performing their prime obligation of offering five times daily prayers or glorifying the name of Allah therein. The exalted position of mosques and rewards to be awarded by Allah to those who construct mosques or offer prayers and raise the name of Allah therein is amplified in a number of traditions of the Holy Prophet (s.a.w.s.) some of which are quoted below:---

حدثنا يحيى بن سليمان قال حدثني ابن وهب اخبرني عمرو ان بكيرا حدثه ان عاصمه ابن عمر بن فتادة حدثه انه سمع عبيد الله الخولاني انه سمع عثمان ابن عفان يقول عند قول الناس فيه حين بنى مسجد الرسول صلى الله عليه وسلم انكم اكثرتم و اني سمعت النبي صلى الله عليه وسلم يقول (من بنى مسجدا قال بكير: حسبته انه قال: يبتغى به وجه الله بنى الله له مثله في الجنة)

"Narrated `Ubaidullah Al-Kaulani: I heard `Uthman bin `Affan saying, when people argued too much about his intention to reconstruct the mosque of Allah's Apostle, 'You have talked too much'. I heard the Prophet saying, 'Whoever built a mosque, (Bukair thought that `Asim, another sub-narrator, added, "Intending Allah's Pleasure"), Allah would build for him a similar place in Paradise'."

(Hadith No.441, Chapter:65, Part XII, Vol.I "The Translation of the Meanings of Sahi Al-Bukhari" by Dr. Muhammad Mohsin Khan).

حدثنا علي بن عبد الله قال: حدثنا يعقوب بن ابراهيم قال: حدثني ابي عن صالح بن كيسان قال: حدثنا نافع ان عبيد الله اخبره ان المسجد كان على عهد رسول الله صلى الله عليه وسلم مبنيا باللبن و سقفه الجريد و عمده خشب النخل فلم يزد فيه ابو بكر شيئا و زاد فيه عمر و بناء على بنينا نه في عهد رسول الله صلى الله عليه وسلم باللبن والجريد و اعاد عمده خشبا ثم غيره عثمان فزاد فيه زيادة كثيرة و بنى جداره بالحجارة و المنقوشة و القصبة و جعل عمده من حجارة المنقوشة و سقفه بالساج - (باب 62 'يهلا حصه' حديث نمبر 437 صحيح البخاري)

"Narrated `Abdullah (bin `Umar): In the lifetime of Allah's Apostle the mosque was built of adobes, its roof of the leaves date-palms and its pillars of the stems of date-palms. Abu Bakr did not alter it. `Umar

expanded it on the same pattern as it was in the life time of Allah's Apostle by using adobes, leaves of date-palms and changing the pillars into wooden ones. `Uthman changed it by expanding it to a great extent and built its walls with engraved stones and lime and made its pillars of engraved stones and its roof of teak wood."

(Hadith No.437, Chapter 62, Part XII, Vol.I, Sahi Al-Bukhari, translated by Dr. Muhammad Mohsin Khan).

وحدثني هارون بن سعيد الايلي واحمد بن عيسى قالانا ابن وهب قال اخبرني عمر و ان بكيرا حدثه ان عاصم ابن عمر بن قتادة حدثه انه سمع عبيدالله الخولاني يذكر انه سمع عثمان بن عفان عند قول الناس فيه حين بنى مسجد الرسول صلى الله عليه وسلم انكم قد اكثرتم و انى سمعت رسول الله صلى الله عليه وسلم يقول من بنى مسجدا لله عزوجل قال بكير حسبت انه قال يبتقى به وجه الله تعالى بنى الله له بيتا فى الجنة و قال بن عيسى فى روايته مثله فى الجنة - (باب 189 حديث نمبر 1094 صفحہ 466 ترجمہ عابد الرحمن صدیقی) (صحیح مسلم شریف) -

"Ubaidullah al-Khauilani reported: Uthman listened to the opinion of the people (which was favourable) when he rebuilt the mosque of the Messenger of Allah (may peace be upon him). Thereupon he said: You have not been fair to me for I have heard from the Messenger of Allah (may peace be upon him) saying: He who built mosque for Allah, the Exalted, Allah would build for him a house in Paradise. Bukair said: I think he (the Holy Prophet) said: While he seeks the pleasure of Allah (by building the mosque). And in the narration of Ibn `Isa (the words are): "(a house) like that (mosque) in Paradise."

(Hadith No.1084, Chapter CXC VIII, Vol.I, Sahih Muslim, by Imam Muslim, rendered into English by Abdul Hamid Siddiqi).

حدثنا زهير بن حرب و محمد بن مثنى واللفظ لابن مثنى قالانا الضحاك مغلد قال انا عبد الحميد بن جعفر قال حدثني ابي عن محمود ابن لبيد ان عثمان بن عفان اراد بناء المسجد نكره الناس ذلك فاحبوا ان يدعه على هيئته فقال سمعت رسول الله صلى الله عليه وسلم يقول من بنى مسجدا لله بنى الله له بيتا فى الجنة مثله - (باب 189 حديث نمبر 1095 صحیح مسلم شریف ' ترجمہ عابد الرحمن صدیقی)

"Mahmud b. Lahid reported: when `Uthman b. `Affan intended to

build the mosque (of the Prophet) the people did not approve of it. They liked that it should be kept in the same state. Thereupon he said: I heard the Messenger of Allah (may peace be upon him) say: He who built a mosque for Allah, Allah would build a house for him like it in Paradise."

(Hadith No.1085, Chapter CXCVIII, Vol.I, Sahi Muslim, by Imam Muslim, rendered into English by Abdul Hamid Siddiqi)

وحدثنا هارون بن معروف و اسحق بن موسى الانصارى قالنا انس بن عياض قال حدثنى ابن ابى زباب فى روايته هارون و فى حديث الانصارى حدثنى الحارث عن عبد الرحمن بن مهران مولى ابى هريرة عن ابى هريرة رضى الله عنه ان رسول الله صلى الله عليه وسلم قال احب البلاد الى الله عزو جل مساجدها و اغض البلاد الى الله تعالى اسواقها - (صحيح مسلم شريف ' صفحه 567' باب نمبر 230' حديث نمبر 1430' جلد اول) مترجم مولانا عابد الرحمن

(صديقي)

"Abu Huraira reported that the Messenger of Allah (may peace be upon him) said: The parts of land dearest of Allah are its mosques, and the parts most hateful to Allah are marketss"

(Sahi Muslim rendered into English by Abdul Hamid Siddiqi, Vol.I, Tradition No. 1416, Published by Sh. Muhammad Ashraf).

حدثنا يحيى بن معين نا ابو عبيدة الحد ادنا اسمعيل ابو سليمان الكحال عن عبدالله بن اوس عن بريدة عن النبى صلى الله عليه وسلم قال بشرا المشائين فى الظلم الى المساجد بالنور التام يوم القيامة - (سنن ابو داود ' جلد 1' صفحه 239' باب نمبر 199' حديث نمبر 558)

"Hazrat Bureeda (r.a.a.) reported that the Holy Prophet (s.a.w.s.) said 'Give good news of complete light to those who go to mosques in darkness'."

(Sunan Abi Dawood, Vol.I, Chap. 199, page 239, Hadith No.558).

عن ابى هريره عن النبى صلعم قال حين يخرج الرجل من بيته الى مسجده فرجل تكتب حسنة ورجل تمحوسة - (سنن نسائى ' مترجم جلد 1' صفحه 188' ترجمه ابو عبدالرحمن بن شعيب بن على بن بحر النسائى)

"Hazrat Abu Huraira reported: that the Holy Prophet (s.a.w.s.) said, 'When a person leaves his house intending to go to the mosque (for

prayers) and takes a step forward, one virtue is written for him and on another step, one vice is forgiven'."

(Sunan Nasaee, Book about Mosques, translated by Allama Waheed-uz-Zaman, Vol.I, page 188).

حدثنا عبدالله بن يوسف قال اخبرنا مالك عن نافع عن عبدالله ابن عمر ان رسول الله صلى الله عليه وسلم قال صلاة الجماعة تفضل صلاة الفذ بسبع وعشرين درجة (پہلا حصہ ' حدیث نمبر 618)

"Narrated Abdullah bin Umar Allah's Apostle said, "the prayer in congregation is twenty-seven times superior to the prayer offered by a person alone."

(Sahi Al-Bukhari, Chap.30, Hadith No.618, Vol.I, page 351).

حدثنا عبدالله بن يوسف قال حدثني الليث قال حدثني بن الهاد عن عبدالله بن جناب عن ابي سعيد الخدري انه سمع النبي صلى الله عليه وسلم يقول صلاة الجماعة تفضل صلاة الفذ بخمس وعشرين درجة. (پہلا حصہ ' حدیث نمبر 619)

"Narrated Abu Said Al-Khudri: The Prophet said, 'The prayer in congregation is twenty-five times superior to the prayer offered by a person alone'."

(Sahi Al-Bukhari Chap.30, Hadith No.619, Vol:I, page 351)

حدثنا موسى بن اسماعيل قال، حدثنا عبد الواحد قال، حدثنا الاعمش قال، سمعت ابا صالح يقول سمعت ابا هريرة يقول، قال رسول الله صلى الله عليه وسلم، صلاة الرجل في الجماعة تضعف على صلاته في بيته وفي سوقه خمساً وعشرين ضعفاً" وذاك انه اذا تواضاً فاحسن الوضوء ثم خرج الى المسجد لا يخرج به الا الصلوة لم يحظ خطوة الا رفعت له بها درجة و حط عنه بها خطية فانما صلى لم تزل الملائكة تصلي عليه مادام في مصلاه: اللهم صل عليه اللهم ارحمه ولا ينال احدكم في صلاة ما انتظر الصلاة. (صحيح البخارى ' حصہ اول صفحہ 351 حدیث نمبر 620)

"Narrated Abu Huraira: Allah's Apostle said, 'The reward of the prayer offered by a person in congregation is twenty-five times greater

than that of the prayer offered in one's house or in the market (alone). And this is because if he performs ablution and does it perfectly and then proceeds to the mosque with the sole intention of praying, then for every step he takes towards the mosque, he is upgraded one degree in reward and his one sin is taken off (crossed out) from his accounts (of deeds). When he offers his prayer, the angels keep on asking Allah's Blessings and Allah's forgiveness for him as long as he is (staying) at his Musalla. They say, 'O Allah: Bestow your blessings upon him, be merciful and kind to him.' And one is regarded in prayer as long as one is waiting for the prayer."

(Sahi Al-Bukhari, Chapter 30, Vol.I, page No.352, Hadith No.620, translated by Dr. Muhammad Mohsin Khan)

وعن ابن عباس قال المساجد بيوت الله في الارض تضي لاهل السماء كما تضي نجوم السماء لاهل الارض- (رواه الطبراني في الكبير)

"It is reported from Ibn-e-Abbas that the Holy Prophet (s.a.w.s.) said that the mosques are Houses of Allah on earth and look shining to those at sky just as stars in the sky appear shining to residents of the earth."

(Majma-uz-Zawaid Was Mumba-ul-Fawa'id by Iraqi and Ibn-e-Hajar, Vol. I, page 7, published Maktaba Alquaddasi Qahra.

حدثنا عبدالرحمن بن بشر بن الحكم و احمد بن الانهر قالانا مالك بن معير و انبانا هشام بن عروة عن ابيه عن عائشة ان رسول الله صلى الله عليه وسلم امر بالمساجد ان تبني في الدور وان تطهر و تطيب- حديث نمبر 804-
حدثنا رزق الله بن موسى ثنا يعقوب ابن اسحق الحضرمي ثنا زائدة بن قدامة عن هشام ابن عروة عن ابيه عن عائشة قالت امر رسول الله صلى الله عليه وسلم ان تتخذ المساجد في الدور وان تطهر و تطيب- (حديث نمبر 805)-

Hazrat Aisha narrated that the Holy Prophet (s.a.w.s.) ordered that mosques be built in Mohallas; be kept neat and clean and (filled with) fragrance.

(Tradition Nos.804, 805, Sunan Ibn-e-Maja, Vol.I, pages 247-248, published by Muhammad Saeed and Sons, Karachi).

عن حديث بن قبيصة قال قدمت المدينة فقلت اللهم يسر لي جليسا "صالحا" قال فجلس الى ابي هريرة فقلت اني سألت الله ان يرزقني جليسا "صالحا" فحدثني بحديث سمعته من رسول الله صلى الله عليه وسلم لعل الله ان

ينفعني به فقال سمعت رسول الله صلى الله عليه وسلم يقول ان اول ما يحاسب به العبد يوم القيامة من عمله صلواته فان صلحت فقد افلح و الحج و ان فسدت فقد خاب وخسر-----" (حديث نمبر 396 جامع ترمذی 'جلد اول' صفحه 264 ترجمہ از مولانا علامہ محمد صدیق سعیدی ہزاروی)

Huris bin Qabisa said, "I stayed with Abu Huraira and told him that I had prayed to Allah to give me a virtuous companion, so narrate to me some saying of the Holy Prophet (s.a.w.s.) which may benefit me". Abu Huraira narrated that the Holy Prophet (s.a.w.s.) said, "On the Day of Judgement a person will be first called upon to account for (five times obligatory) prayers. If the said account turned out to be right he would get success and salvation and others would fail and suffer."

25. The above traditions of the Holy Prophet (s.a.w.s.) clearly show that construction of a mosque is the supreme act of virtue; that Allah builds similar places in Paradise for those who build mosques; that mosques are the most favourite places of Allah; that the reward for prayer in congregation in a mosque is 25 or 27 times more than the prayer offered by a person alone; that on the Day of Judgement a Muslim will be first called upon ~~to~~ account for his daily obligatory prayers; and that mosque must be kept neat and clean. E

26. After having referred to the Verses of the Holy Qur'an and traditions of the Holy Prophet (s.a.w.s.) regarding the high status of mosques and the importance of congregation prayers to be offered in mosques, I may now advert to the question as to what is meant by (شعائر الله) whether mosques fall within the meaning of the said expression and deserve to be respected as ordained in Verse No.2 of Sura Al-Maida (No.5) and Verse No.32 of Sura Al-Haj (No.22).

27. The word (شعائر) is the plural of the word (شعيرة) or (شعاره) which means "symbol". Hence the expression (شعائر الله) would mean symbols of Allah and include anything dedicated in the name of Allah or acts done or performed in pursuance of some direct command of Allah or the Holy Prophet Hazrat Muhammad (s.a.w.s.) or anything specifically declared so in the Holy Qur'an or Sunnah of the Holy Prophet (s.a.w.s.). The mountains of Safa and Marwa at Makkah, Ahraam of the pilgrims for Haj and Umra, and the animals taken to the Holy Kaaba for being sacrificed in the name of Allah called ~~are~~ declared to be (شعائر الله) in the Holy Qur'an. Likewise, the four Holy months (Moharram, Rajab, Zee-Qaad and Zil-Haj), Edi-ul-Fitr, Eid-ul-Azha, the five times daily prayers including Azan, the Holy Kaaba and all other mosques wherever situated are covered by the said expressions. In the book "لغات القرآن" by Abdur Rahid Naumani following meaning of the F

expression "شعائر اللہ" has been given on the authority of Shah Abdul Aziz Mohaddis Dehlvi:

"شعائر در اصل جمع شعیرہ است یا جمع شعارہ است بمعنی علامت و شعائر اللہ در عرف دین مکانات و از منہ و علامات و اوقات عبادت را گویند اما مکانات عبادت پس مثل کعبہ و عرفہ و مزدلفہ و جماد ثلثہ و صفا و مروہ و منا و جمیع مساجد نہ۔ و اما از منی پس مثل رمضان و اشرف حرم و عید الفطر و عید التحریر و جمیعہ و ایام تشریق اند۔ اما علامات پس اذان و اقامت و ختنہ و نماز جماعت و نماز جمعہ و نماز عیدین اند و در ہمہ این چیز ہا معنی علامت بودن متحقق ست زیرا کہ مکان و زمان عبادت نیز از عبادت بلکہ از معبود یاد میدہد" (لغات القرآن (Vol. 3, page 280)

It means:--

"The word شعائر is plural of شعیرہ or شعارہ which means a symbol and شعائر اللہ as known in religion would mean places, times and symbols of worship. So far as places of worship are concerned these are like Kaaba, Arfa, Muzdalfa, three Jamars, Safa, Marwa, Mina and all other mosques. So far as times are concerned, these are like the month of Ramadan and other honoured months, Eid-ul-Fitr, Eid-un-Nahar, Juma, days of Tashreeq; and symbols are like Azaan, Iqamat, Khatna/incision, congregation prayers, the Juma prayers and prayers of two Eids; all the above symbols including places, time of worship and method of worship are such as remind God Almighty."

Again, the meaning of expression شعائر اللہ has been described in the commentary of the Holy Qur'an known as Khazan (Vol. II, page 4) in the following words:--

شعائر اللہ 'شرائع اللہ و معالم دینہ'

(Shaaairallah are Injunctions of Allah and symbols of His Din/Religion). At another place, it has been explained that anything which is a symbol for some virtuous act meant for taking a person nearer the Almighty Allah, like Salatt or Dua'a or Zabeeha (slaughtering an animal in the name of Allah) is شعیرہ and included in the expression شعائر اللہ. In معالم التنزیل (Vol. I, page 111), it has been stated that mosque being a symbol of prayers is included in the expression شعائر اللہ. The concept of Shaaairallah is lucidly described by Maulana Abul Ala Maudoodi in "Tafheem-ul-Qur'an in the following words:

"ہر وہ چیز جو کسی مسلک یا عقیدے یا طرز فکر و عمل کسی نظام کی نمائندگی کرتی ہو وہ اس کا

”شعار“ کہلائے گی۔ کیونکہ وہ اس کے لئے علامت یا نشانی کا کام دیتی ہے۔ سرکاری جھنڈے ’فوج اور پولیس وغیرہ کے یونیفارم‘ کے ’نوٹ اور اسٹامپ حکومتوں کے شعار ہیں اور وہ اپنے حکموں سے بلکہ جن جن پر ان کا دور چلے‘ سب سے ان کے احترام کا مطالبہ کرتی ہیں۔ مگر جاوڑ قربان گلہ اور صلیب مسیحیت کے شعار ہیں۔ چوکی اور ڈنار اور مندر برہمنیت کے شعار ہیں۔ کیس اور کڑا اور کرپان وغیرہ سکھ مذہب کے شعار ہیں۔ ہتھوڑا اور درانتی اشتراکیت کا شعار ہے سواستیکا آریہ نسل پرستی کا شعار ہے۔ یہ سب ملک اپنے اپنے پیروؤں سے اپنے ان شعار کے احترام کا مطالبہ کرتے ہیں۔ اگر کوئی شخص کسی نظام کے شعار میں سے کسی شعار کی توہین کرتا ہے تو یہ اس بات کی علامت ہے کہ وہ دراصل اس نظام کے خلاف دشمنی رکھتا ہے۔ اور اگر وہ توہین کرنے والا خود اسی نظام سے تعلق رکھتا ہو تو اس کا یہ فعل اپنے نظام سے ارتداد اور بغاوت کا نام معنی ہے۔

”شعارِ اللہ“ سے مراد وہ تمام علامات یا نشانیاں ہیں جو شرک و کفر اور دہریت کے بالمقابل خالص خدا پرستی کے مسلک کی نمائندگی کرتی ہوں۔ ایسی علامات جہاں مسلک اور جس نظام میں بھی پائی جائیں مسلمان ان کے احترام پر مامور ہیں۔ بشرطیکہ ان کا نفسیاتی پس منظر خالص خدا پرستانہ ہو، کسی مشرک دنیا کا فراتہ تخیل کی آلودگی سے انہیں ناپاک نہ کر دیا گیا ہو۔ کوئی شخص خواہ وہ غیر مسلم ہی کیوں نہ ہو۔ اگر اپنے عقیدہ و عمل میں خدائے واحد کی بندگی و عبادت کا کوئی جزو رکھتا ہے تو اس جزو کی حد تک مسلمان اس سے موافقت کریں گے اور ان شعار کا بھی پورا احترام کریں گے جو اس کے مذہب میں خالص خدا پرستی کی علامت ہوں۔ اس چیز میں ہمارے اور اس کے درمیان نزاع نہیں بلکہ موافقت ہے۔ نزاع اگر ہے تو اس امر میں نہیں کہ وہ خدا کی بندگی کیوں کرتا ہے بلکہ اس امر میں یہ ہے کہ وہ خدا کی بندگی کے ساتھ دوسری بندگیوں کی آمیزش کیوں کرتا ہے۔

یاد رکھنا چاہئے کہ شعارِ اللہ کے احترام کا یہ حکم اس زمانہ میں دیا گیا تھا جب کہ مسلمانوں اور مشرکین عرب کے درمیان جنگ برپا تھی، بلکہ پر مشرکین قابض تھے، عرب کے ہر حصے سے مشرک قبائل کے لوگ حج و زیارت کے لئے کعبہ کی طرف جاتے تھے اور بہت سے قبیلوں کے راستے مسلمانوں کی زد میں تھے۔ اس وقت حکم دیا گیا کہ یہ لوگ مشرک ہی سہی تمہارے اور ان کے درمیان جنگ ہی سہی، مگر جب یہ خدا کے گھر کی طرف جاتے ہیں تو انہیں نہ چھیڑو‘ حج کے مہینوں میں ان پر حملہ نہ کرو‘ خدا کے دربار میں نذر کرنے کے لئے جو جانور یہ لئے جا رہے ہوں ان پر ہاتھ نہ ڈالو‘ کیونکہ ان کے بگڑے ہوئے مذہب میں خدا پرستی کا جتنا حصہ باقی ہے وہ بجائے خود احترام کا مستحق ہے نہ کہ بے احترامی کا۔

صفحہ 4۔ شعارِ اللہ کے احترام کا عام حکم دینے کے بعد چند شعار کا نام لے کر ان کے احترام کا خاص طور پر حکم دیا گیا۔ کیونکہ اس وقت جنگی حالات کی وجہ سے یہ اندیشہ پیدا ہو گیا تھا کہ جنگ کے جوش میں کہیں مسلمانوں کے ہاتھوں ان کی توہین نہ ہو جائے۔ ان چند شعار کو نام بنام بیان کرنے سے یہ مقصود نہیں ہے کہ صرف یہی احترام کے مستحق ہیں۔

صفحہ 7۔ احرام بھی من جملہ شعارِ اللہ ہے اور اس کی پابندیوں میں سے کسی پابندی کو توڑنا اس کی بے حرمتی کرنا ہے۔ اس لئے شعارِ اللہ ہی کے سلسلے میں اس کا ذکر بھی کر دیا گیا کہ جب تک تم احرام بند ہو شکار کرنا خدا پرستی کے شعار میں سے ایک شعار کی توہین کرنا ہے۔ البتہ جب شرعی قاعدہ کے مطابق احرام کی حد ختم ہو جائے تو شکار کرنے کی اجازت ہے۔

تفہیم القرآن از ابو الاعلیٰ مودودی، صفحہ 438 تا 439 (جلد اول)

28. Allah has commanded not to show disrespect to symbols of God or violate them:--

يا ايها الذين امنوا لا تحلوا شعار الله ولا الشهر الحرام ولا الهدى ولا القلائد ولا
امين البيت الحرام يبتغون فضلا من ربهم ورضوانا"۔ (پارہ چہٹا 'سورۃ
المائدہ' آیت نمبر 3)

It means:--

"O Ye who believe!
Violate not the sanctity
Of the Symbols of Allah,
Nor of the Sacred Month,
Nor of the animals brought
For sacrifice, nor the garlands,
Nor the people resorting
To the Sacred House,
Seeking of the bounty
And good pleasure
Of their Lord."

(S.V.3, Vol. I, Translation by Mr. Abdullah Yusuf Ali).

At another place, it is said in the Holy Qur'an:--

"ومن يعظم شعائر الله فانها من تقوى القلوب" (سورۃ الحج 'پارہ 17'
آیت 32)

It means:--

"Whoever holds in honour the symbols of Allah, such honour comes truly from piety of heart."

In his book "Al-Mohalla", Ibn-i-Hazam has opined that whoever shows disrespect to "Shaa'irallah" becomes an apostate (Al-Mohalla, Vol. 11, page 421 Edited by Shakir). Mosques being permanently dedicated in the name of

Almighty Allah, are used by Muslims in accordance with His commands for offering prayers and glorifying His name are not only included in "شعائر الله" but also belong to their upper strata and deserve unconditional respect and have to be properly maintained and protected. In the historic event of attempt made by Abrahah about 50/55 days before the birth of the Holy Prophet (s.a.w.s.) to demolish the Holy Kaaba, Almighty Allah directly intervened, punished the wrongdoers and destroyed them completely (Reference Sura Al-Feel). The extraordinary step was taken by the Almighty Allah in view of the extraordinary position of the Holy Kaaba and the role which this central mosque was destined to play in the future human history. H

29. Coming to the merits of the present case, first of all, I would like to deal with the argument raised by the learned Assistant Advocate-General that the disputed mosque was demolished because it was not a Sharee mosque and that the site was never dedicated by the Provincial Government for constructing a mosque.

30. The facts borne on the record show that the disputed site belonged to the Government of the Punjab and that the Government had allowed Muslims to use the land as a mosque from times immemorial. No exact data is available to ascertain as to when the disputed site was set apart for being used as a mosque. However, Letter No.B.C./9 dated 2-1-1956 from the Deputy Commissioner, Lahore to the Executive Engineer, PWD, Lahore (Annex D/4) on the subject of "Construction of a Mosque" at the disputed site shows that several years before partition of the sub-continent of Indo-Pakistan, the site was being used for offering prayers. The Provincial Government never objected to the use of the site as a mosque either before or after partition of the sub-continent which clearly implied consent to dedicate the property as a Wakf for a mosque. I

31. The question whether the long user of a property for offering five times prayers without any objection on the part of the owner is sufficient to convert it into a mosque needs detailed examination. Mosque is kind of Wakf and all rules of Islamic Law governing creation of Wakf are equally applicable thereto. Ordinarily, a Wakf is created by permanent dedication of property lawfully owned by a person for any purpose recognised under the Islamic Law, as religious, pious or charitable. No particular form is prescribed under the law for creating Wakf. Hence it may be made verbally or in writing or be treated to have been made through long user of the property, for the abovementioned purposes. In his book "Muhammadan Jurisprudence", Abdur Rahim writes:-- J

"The creation of a Wakf does not require the use of any particular words, but the intention to settle the property in perpetuity must be made clear whether by the use of the word wakf or otherwise. If a wakf is in the shape of an institution for public use, such as a mosque, a rest-house for travellers, a burial ground and the like, some act is necessary by which dedication to public use may be inferred." (Page 308)

In his book "Muhammadian Law", Syed Ameer Ali writes:---

"When the structure does not bear the shape of a mosque, or when there is no evidence of a declaration on the part of Wakif that he has constituted a building into a Masjid and the evidence of dedication depends on the performance of prayers within it, some lawyers have held such prayers should be with Azan and Ikamat....As the purpose of a mosque is that people should pray there ⁱⁿ ~~is~~ Jamaat, it is required that where there is no express dedication, prayer should have been offered there with Azan and Ikamat." (V.I, p.395)

In his book, "Principles of Muhammadan Law" Sir D.F. Mulla writes:---

"...If land has been used from time immemorial for a religious purpose, e.g., for a mosque or a burial ground or for the maintenance of a mosque then the land is by user Wakf although there is no evidence of an express dedication."

(Sec. 178, Pakistan Edition, (1987), page 243).

32. The above view finds support from the judgment in the case of "Umar Din and others v. Mst. Aishan and others" (A.I.R. 1921 Lahore 303). A Division Bench of the Lahore High Court held that dedication of a property for religious purposes can be implied and need not be express (though on facts the Court found that the only property declared to be set aside for the upkeep of the shrine was land revenue and not the land itself). In Rashid-ud-Daula's case (PLD 1961 W.P. Lahore 993), a Division Bench of this Court held:---

"It is hardly open to question that if any property has been used as Wakf property from times immemorial, a Court of law would be justified in drawing an inference that a valid Waqf had been created. When a Court draws this inference, it is acting in complete accord with the law because section 3 of the Evidence Act makes it clear that for the purposes of Courts fact can be said to be proved if on the material before the Court a reasonable person would believe that fact exists."

Therefore, the dedication of the property whether made expressly or impliedly or by long user, extinguishes the title of the original owner. In the case of "Muru and others v. Ram Gopal" (1935 All. L.J. 1269), a Hindu Zamindar filed a suit for permanent injunction to restrain the Muslims from raising Pacca structure at the disputed place where a Katcha platform was used for offering prayers. The trial Court held that no Katcha mosque existed at the spot but the said finding was reversed in first appeal. The Appellate Court held that the property/house was used as a place of worship by Mussalmans of the village for more than 30 years and that various constructions had been made to adapt the house to a mosque during the time it was a Katcha mosque. The

Appellate Court reversed the judgment and decree of the trial Court. The matter came up before the High Court in the second appeal which was allowed. Thereafter, the case went before a Division Bench in Letters Patent Appeal and the appeal was allowed. The Court held that the consent of Zamindar to the use of a building as a mosque is sufficient to convert it into Wakf. In his separate note, Sulaiman C.J. added that:---

"But where a building has stood on a piece of land for a long time and the worship has been performed in that building, then it would be a matter of inference for the Court which is the judge of facts, as to whether the right has been exercised in that building for such a sufficiently long time as to justify the presumption that the building itself had been allowed to be consecrated for the purpose of such rights being performed. Where there is a mosque or a temple, which has been in existence for a long time and the terms of the original grant of the land cannot now be ascertained, there would be a fair presumption that the sites on which mosques or temples stand are dedicated property."

In the case of Munshi Abdul Rahim Khan and others v. Fakir Muhammad Shah and another (A.I.R. (33) 1946 Nagpur 401) the question of creation of Wakf by long user was considered. It was held:

"In a case of this nature where ancient history is not available a decision will have to be based on such evidence as can be gathered from how the public regarded this property, its environment and the conduct of the parties."

In the case of Hafiz Mustafa Khan and 9 others v. Haji Bundoo Khan (PLD 1993 Karachi 805), it was held:---

"Once a building is set apart as mosque and prayers are offered therein, the mosque itself becomes a Wakf by user under the Muhammadan Law. In such cases, the property in Wakf vests in Allah and nobody can claim ownership of that property."

In the case of Haji Muhammad Siddique and others v. The Chief Administrator of Aqaf, Punjab, Lahore 1993 MLD 1612 it was held:---

"If a particular place has been used over a considerable length of period, for religious or charitable purposes it would come to assume the character of a Wakf property."

In the present case, the disputed site was continuously used for offering daily prayers and Juma prayers from times immemorial and became a lawful mosque even before the partition of the sub-continent.

33. After partition a general policy was laid down to construct mosques at the premises of District Courts. In this connection, Letter No.182-R dated

21-1-1953 from the office of the Financial Commissioner, Punjab was sent to all Deputy Commissioners in the Punjab except Deputy Commissioners Sialkot, Sheikhpura, Gujrat, Shahpur, Attock, Montgomery (Sahiwal) and Multan, which stated that the Government had decided to provide 1/4th share of the total cost for construction of mosques in the premises of such public offices as were visited by a large number of persons and the remaining 3/4th was to be arranged by the promoters. Hence, different sums of money were placed at the disposal of the concerned Deputy Commissioners under the Head "57-Miscellaneous-F-Construction of Mosques in the compounds attached to Government buildings." It was further stated in the letter that the construction work should be completed by the end of February, 1953. In pursuance of the above letter Deputy Commissioner, Lahore wrote Letter No.2C/X-II-620/2245 dated 10-2-1953 to the President, District Courts Mosque Managing Committee, Lahore, the SDO, Kasur and the Tehsildar, Kasur/Chunian stating therein that the Government had decided to pay 1/4th of the estimated cost of "repairs" to the mosques situated in the Kutchery compounds. It appears that in the body of the letter the word "repairs" was mistakenly used instead of construction because till then the mosque had not been built, hence the question of its repairs did not arise. The subject cited in the letter clearly mentioned "allotment of funds for construction of mosques in the premises of the Kutchery Compounds". It was mentioned in the letter that the total amount of estimated expenditure for the mosque at the District Courts, Lahore was Rs.10,078 out of which the Government had sanctioned grant of Rs.2,519/8 and the remaining amount of Rs.7,558/8 was to be contributed by the promoters. With reference to the above letter, the President, District Courts Mosques Managing Committee wrote to the Deputy Commissioner, Lahore that a meeting of the Managing Committee was convened and it was decided to raise subscriptions for the proposed construction of the mosque. It was requested that the time for construction work was short, hence, the date for disbursement of the amount may be extended. It was further requested that the sanctioned amount may be withdrawn and placed with the District Nazir so that it may not lapse. Thereafter, the Governor of Punjab laid down a detailed general policy for construction of mosques in the compounds attached to Government buildings. It was embodied in Letter No.282-54/776-R dated 7-4-1954 which reads as under:---

"In supersession of the previous orders in this subject, the Governor of the Punjab is pleased to order that no mosque should be allowed to be constructed in the premises of Government buildings without the express sanction of Government. Government will consider the grant of sanction only if---

- (a) it is proposed to construct the mosque in such premises of Government buildings as are visited by a large number of persons and there is no mosque in the immediate vicinity which can conveniently be used for offering prayers; and

(b) the sponsors of the mosque undertake to abide by the following conditions:---

- (i) The mosque will not be named after any sect or person;
 - (ii) The mosque will be open to Muslims of all sects for saying their prayers;
 - (iii) The Managing Committee of the Mosque will have the Head of Office or the Head of Department as its ex-officio President and agree to the nomination of the Secretary and the majority of the members of the Managing Committee from Government servants by the President;
 - (iv) The designs of the mosque shall be subject to the approval of the Local Executive Engineer, Public Works Department, Buildings and Roads Branch and no further additions or alternations will be made in the design without the previous sanction of Government. The mosque should not be too big but should only provide for the genuine necessity; and
 - (v) The entries regarding the land will not be varied even after the construction of mosque.
- (2) The above decision does not apply to the premises of Government buildings used as residence of Government employees and there no mosque shall be allowed to be built.
- (3) In addition to the provision of free land, it has also been decided to give financial aid for the mosque's construction of which has been sanctioned by Government to the extent of Rs.15,000 each or one-fourth of the total estimated cost of construction, whichever is less provided:
- (i) The sponsors have not been able to collect the entire funds despite their best efforts;
 - (ii) The remaining three-fourth of the cost is collected and deposited in a Bank in the account of the Managing Committee which will be operated by the President; and
 - (iii) The Managing Committee undertakes to arrange for the upkeep and repairs of the mosque out of its funds. Government will not accept responsibility for any further expenditure.
- (4) It is requested that these instructions may be carefully observed in forwarding proposals to Government."

It is significant to point out that the Government had agreed to provide free land and financial aid for construction of mosques in the compounds

attached to Government buildings. In pursuance of the above policy, the Deputy Commissioner, Lahore wrote letter dated 2-1-1956 to the Executive Engineer, P.W.D., Lahore to inspect the site of the mosque and give his advice in the matter. The relevant part of the letter is reproduced below:---

- "2. There is already a platform in the premises of the District Courts, Lahore where prayers are being offered since several years before partition. The officials of this office have now formed a Managing Committee for the construction of a mosque there. Before Government can be moved in the matter I would request you to please inspect the site and give your advice in the matter."

The Executive Engineer gave the following advice vide his Letter No.170-M, dated 26-1-1956:---

"The praying platform is quite aloof from the rest of the buildings towards Central Training College Road. If the Managing Committee feels the necessity of a permanent structure, I do not think there is any objection to it if the construction is subject to approved design."

The members of the staff from the office of the Deputy Commissioner, Lahore formed an Association with the Deputy Commissioner, Lahore as its Chairman and opened an account in the Habib Bank Limited, Lahore. The Government authorised the official members of the Managing Committee to collect subscriptions and donations from officials and organisations vide Letter No.L&F-6/4-56 dated 16-7-1956. Thus the Government agreed to the construction of a mosque at the District Courts premises and allocated grant to the extent of 1/4th of the total cost of construction. It is noteworthy that the Government had decided to give free land and financial aid for mosques, construction of which had been sanctioned by Government (Para. 3, Policy Letter No.282-54/776-R, dated 7-4-1954. The Managing Committee obtained sanction of plan for construction of the mosque from the Lahore Corporation. Thereafter the construction work was started some time during the year 1961. At one stage the Secretary, Mosque Committee wrote letter dated 15-2-1961 stating therein that construction of the mosque was going on with sanction of the Government. It was further stated that there were some trees in the compound of the mosque and permission was sought to cut the trees and sell them through public auction. The construction of the mosque was completed within the short period and the mosque was utilised by the members of the staff, the Advocates, the litigants and the general public for offering five times prayers, the weekly Juma prayers and the Eid prayers.

34. The above-narrated facts establish beyond any shadow of doubt that the Provincial Government had consciously allowed the site to be used as a mosque for an indefinite period and it was actually used as a mosque for offering five times daily prayer long before the partition of the sub-continent of Indo-

Pakistan. Hence the site became a Sharee mosque even before the partition. After partition, the Government announced its policy to allocate or dedicate the land for mosques free of cost, contributed funds partly and called upon Muslims to contribute the remaining funds for construction of a Pacca mosque. The Muslims acted upon the policy/representation made by the Government, contributed the remaining 3/4th amount of the cost of construction and a Pacca mosque was constructed with the consent and active assistance of the Government. It is astonishing that now the Government has come forward with a false and inconsistent plea that no Sharee mosque existed at the site. In the comments submitted by the Deputy Commissioner, respondent No.2, on the one hand it was asserted that permission of the Government was not granted for construction of a mosque and on the other hand, stated that the sanctity of the site where prayers were offered would be maintained (paras. 2 and 9 of the parawise comments). In para. 6 of the report, it has been stated:---

"The site of the demolished mosque shall not be converted for any other use including fountain, office building, car-parking or any other purpose. The place would be clearly demarcated and would be decorated with grass, flowers and plants in order to maintain its sacrosanct nature."

This clearly indicates awareness on the part of the Government that the site had become a Sharee mosque and for that reason its sanctity had to be maintained. Generally, Government is said to be a fair litigant and all official acts are presumed to have been properly done unless the contrary is proved. However, experience in the present case as well as in a large number of cases pertaining to political detention and compulsory acquisition of land has shown that the cloak of fairness has been taken off by the Government. Keeping in view the said unfortunate state of affairs coupled with the gradual decline in the standard of integrity and honesty of Government officials, Courts of law should now be loath to act upon the old presumption of treating the official acts to have been properly done. In the present case, the Government not only raised a false and inconsistent plea but also suppressed the relevant correspondence regarding allocation of free land, sanction of funds by the Government and permission granted to Muslims to construct a Pacca mosque. The mosque was completed somewhere in the year 1961 and five times daily prayers, Juma prayers and Eid prayers were regularly offered there. The Provincial Government and the Deputy Commissioner whose office was situated at a short distance from the mosque never objected to the construction of the Pacca mosque or use of the premises as a mosque. The mosque was demolished suddenly in a secret and surreptitious manner on 6-10-1992 despite solemn assurances given to various delegations that the mosque will not be demolished. For face saving, after demolishing the mosque, the Government obtained Fatawa from a few religious scholars without disclosing all the relevant facts particularly those showing allocation of free land and contribution of funds by the Government to construct the mosque. During

the pendency of the writ petition, I gave an opportunity to the Provincial Government and the Deputy Commissioner, Lahore to decide whether they were ready to reconstruct the mosque at the original site. The Deputy Commissioner personally appeared in the Court and stated that in his view the new site was more suitable for the mosque. On behalf of the Provincial Government, the learned A.A.-G. stated (after obtaining instruction from the then Chief Minister, Punjab) that the Government was only waiting for the decision of this Court and would comply with the same. Thus, it became apparent that the respondents were not willing to reconstruct the mosque at the old site. Although, the conduct of the respondents was not fair, the learned A.A.-G. who appeared on their behalf argued the case in a fair and straight-forward manner. He did not deny the correctness of the above-referred official correspondence including letters regarding allocation of free land and contribution of funds by the Government. He also frankly admitted that in the comments submitted on behalf of respondent No.2 it was wrongly mentioned that the new design of the mosque was got prepared from the well-known architect Nayyar Ali Dada. He stated that no such design or sanctioned map existed on the record. This also demonstrates the unfair conduct of respondent No.2. Mr. Nasir Ahmad Ghazi, Advocate (who appeared as an *amicus curiae*) had rightly urged that the mosque was constructed with the express approval of the Government for which it had partly contributed funds, hence the Government was estopped by its own conduct to change its stand and assert that no Sharee mosque existed at the spot, particularly after the lapse of more than 50 years during which the building of the mosque remained in existence. M

35. It is settled law that on creation of a Wakf, the property immediately and irrevocably vests in Almighty Allah and cannot be put to any use other than the one for which the Wakf was created. The authority for the above view is the well-known tradition of the Holy prophet (s.a.w.s) narrated by Ibn-e-Umar. He said:--- N

"In the lifetime of Allah's Apostle (s.a.w.s.) Umar gave in charity some of his property, a garden of date-palms called Thamgh. 'Umar said, 'O Allah's Apostle I have some property which I prize highly and I want to give it in charity'. The Prophet (s.a.w.s.) said, 'Give it in charity (i.e. as an endowment) with its land and trees on the condition that the land and trees will neither be sold nor given as a present, nor bequeathed or inherited, but the fruits are to be spent in charity.' So 'Umar' gave it in charity, and it was for Allah's cause, the emancipation of slaves, for the poor, for guests, for travellers, and for kinsmen."

(English translation of Sahih Al-Bukhari by Dr. Muhammad Muhsin Khan, Islamic University, Al-Medina Al-Munawwara, Tradition No.26, Chapter 23, Vol.IV, page 22).

(Tradition No.2772, Chapter 28, Bab-ul-Wakf, Vol.V, Fathul Bari, page 399).

In Fathul Bari (commentary of Sahi Bukhari) Ibn-e-Hajar quotes the following additional words occurring in the narrations of the same tradition by Daarkutni:---

حبیس مالدت السماوات والارض

Meaning thereby that the land would remain dedicated as Wakf till the existence of heavens and the earth.

36. The principle embodied in the abovereferred tradition of the Holy Prophet (s.a.w.s.) is equally applicable to a mosque. It is said in "Ain-ul-Hidaya" (Vol.2, page 655):---

۳۰ اور جس شخص نے اپنی زمین کو مسجد بنایا تو اس کو اختیار نہیں ہے کہ اس سے رجوع کرے اور وہ فروخت نہیں ہو سکتی اور نہ اس کی میراث ہو سکتی ہے (اس حکم سے فقہائے حنفیہ کا اتفاق ہے) کیونکہ وہ حق العباد سے جدا ہو کر خالص اللہ تعالیٰ کے واسطے ہو گئی اور اس کی توضیح یہ ہے کہ تمام چیزیں اللہ تعالیٰ ہی کے واسطے ہیں اور جب بندہ نے اپنا حق جو اس کو اللہ تعالیٰ کی طرف سے حاصل ہوا تھا ساقط کر دیا تو وہ اپنی اصل کی طرف راجع ہو گئی یعنی ملک الہی کی طرف پھر گئی تو بندہ کا تصرف اس سے ساقط ہو گیا۔"

It means that once a person converts his land into a mosque he can no longer revoke the Wakf. Thereafter the land can neither be sold nor inherited. The Hanifa Jurists concur with this principle. The reason is that the land is divorced from rights of persons and becomes exclusively dedicated for Allah. It is elucidated that every thing belongs to Allah and show a person given up the right of ownership temporarily give to him by Allah, then the title reverts to the original owner and ownership of the person qua it is lost.

"جب صاحبین کے نزدیک ملک زائل ہو جاتی ہے تو دونوں میں یہ اختلاف ہے کہ امام ابو یوسف کے نزدیک فقط قول سے زائل ہو جاتی ہے اور یہی امام شافعی و امام مالک و امام محمد رحمہم اللہ تعالیٰ کا قول ہے اور یہی اکثر اہل علم کا قول ہے اور مشائخ پنجاب پر ہیں اور فقہہ میں لکھا ہے کہ اسی پر فتویٰ ہے کہ ذانی فتح القدیر اور سران و ہاج میں بھی ہے کہ اسی پر فتویٰ ہے۔"

(Fatawa Alamgiri, Vol.IV, Kitab-ul-Wakf, Chap.2, P.61).

(After making Wakf of the property, the ownership is extinguished according to both (Imam Muhammad and Imam Abu Yousuf). According to Imam Abu Yousuf, the ownership of the Wakif is extinguished with the verbal declaration (of Wakf). The same is the opinion of the three Imams (Imam Shafai, Imam Malik and Imam Muhammad) and most of other religious scholars who are.

based on the same view. Similar is the position in "Fathul Qadeer and in "Assaraj Al-Wahaj". Ibn-e-Hamam in his book "Fathul Qadeer" writes as under:---

المسجد خالص لله سبحانه ليس لاحد فيه حق قال الله تعالى وان المساجد لله
مع العلم بان كل شئ له فائده هذه الاضافة اختصاص به وهو با تقطاع حق كل
من سواه عنه

(Commentary Fathul Qadeer, Vol.6, page 234, published by Musta Al-Babi Wal-Halabi, Second Edition---1970, Egypt)

It means that a mosque is purely for Allah and no one else has any title in it. Allah said that undoubtedly mosques belong to Allah. It is common knowledge that every thing belongs to Allah but the object of this addition is to particularise mosques and to make it clear that the rights of all other qua mosques are extinguished." He further writes:---

(ومن اتخذ ارضه مسجد الم يمكن له ان يرجع فيه ولا يهية ولا يورث عنه) لا
نه تجود عن حق العباد وصار خالصا لله وهذا لان الا شياء كلها لله تعالى واذ
اسقط العبد ما ثبت له من الحق رجع الى الله

Commentary Fathul-Qadeer, Vol.6, page 235 published by Musta Al-Babi Wal-Halabi, Second Edition---1970, Egypt)

It means that if a person converts his land into a mosque then he cannot revoke (the Wakf). The mosque cannot be sold or inherited because rights of individual are extinguished and it vests purely in Allah. This is because everything really belongs to Allah and when a person abandons whatever rights he had (in the land), it reverts to the original owner (i.e. Allah). Alkasani in his book "Bada-e-us-Sanaai" writes as under:

"They (Imam Abu Hanifa, Imam Muhammad and Imam Abu Yousuf) concur that a person can legitimately convert his house or land into a mosque and thereafter the property goes out of his ownership."

Vol.6 page 219, published by H.M. Saeed Co., Karachi).

However, according to Abu Hanifa and Muhammad the passage of the mosque has to be separately provided and saying of prayer is a condition precedent to completion of Wakf. Before the same is done the Wakif can, revoke Wakf and re-assert his title. According to Abu Yousuf the property goes out of the ownership of a person with his mere declaration that he has made it a mosque. Thereafter he cannot change his view and re-assert his own title. Allama Wahaba-tul-Zuhaili in his well-known book "Al-Fiqah-ul-Islami-Wa-

Addillah" (Vol.8, page 172), refers to Egypt's Law No.48 pertaining to the year 1946 and expresses the view:---

"After creation of Wakf for mosque it is not permissible for the owner to revoke or modify the Wakf or to do the same in respect of any thing else dedicated for the mosque."

He further referred to the books known as "Muhazzab", Al-Mughni, Al-Shafee and Takmila etc. to clarify the views of Imam Shafee in respect of an old mosque which had fallen down and abandoned by the people. He said that according to Imam Shafee the ownership of the property will never revert to the Wakf or dedicator and the same cannot be sold or put to any other use. Al-Fiqah-ul-Islami Wa Addillah (Vol.8, page 224). In this connection, Sayyed Amir Ali opines as under:---

"Once a particular property is dedicated, the right of the Wakif is extinguished for ever. He cannot turn round and say afterwards that he had no intention of creating a valid Wakf."

Muhammadan Law Vol.1, p.232)

Baillie in his "Digest of Muhammadan Law", page 616 writes:---

"When a man has an unoccupied space of ground fit for building upon, and has directed a 'known' or body of persons, to assemble in it for prayers, the space becomes a Masjid, if the permission were given expressly to pray in it for ever, or, in absolute terms, intending that it should be for ever; and the property does not go to his heirs at his death. But if the permission were given for a day, or a month, or a year, the space would not become a Masjid; and on his death, it would be the property of his heirs."

The permission granted by the owner whether a person, an institution or a Government, expressly or impliedly, to use a piece of land for offering prayers indefinitely and thereafter actual user of the property by Muslims generally for the said purpose without any objection by the owner would create valid Wakf and extinguish title of the owner. To convert it into a mosque it is not necessary that a particular type of building, dome or minars be constructed thereon. It is the site dedicated for mosque or deemed to be so dedicated by long user which becomes mosque. In Fatawa Usmani, Chapter No.2, page 313 (by Muhammad Mazhar-ul-Haq Ansari, compiled by Abdul Malik Irfani) a similar question was answered in the following words:---

"کسی اراضی کو مسجد قرار دینے کے واسطے اس پر عمارت بنانا یا پہلے سے عمارت کا موجود ہونا ضروری نہیں ہے۔ پس اگر کوئی شخص اپنی اراضی پر بہ نیت دوام و گو لفظ دوام زبان سے نہ کہ عامہ المسلمین کو نماز پڑھنے کی اجازت دے دے تو وہ اراضی مسجد ہو جائے گی اور وہ اس پر سے شخص مذکور کی ملک زائل ہو جائے گی۔"

Hence, as a result of permanent dedication of land for mosque, the site becomes a mosque. S

37. Now I may advert to three important questions, firstly, whether the site of a mosque can be shifted from one place to another, secondly whether the site of a mosque can be abandoned, alienated or put to any other use and thirdly whether under certain circumstances a mosque or a building called or built like a mosque can be demolished?

38. Coming to the first question, it may be said in the very outset that the concept of shifting the site of a mosque is not recognised in the Islamic law and Jurisprudence. It is a time honoured principle of the Islamic Law that once a site lawfully becomes a mosque then it always remains a mosque. The Holy Kaaba, Masjid-e-Nabvi, Masjid Al-Aqsa, Masjid-e-Quba and all other mosques wherever situated have to remain at their original sites till eternity. According to the Injunctions of the Holy Qur'an and traditions of the Holy Prophet (s.a.w.s.), mosques belong to Allah, must be properly maintained, permanently preserved and fully respected as being symbols of Allah. Even if a mosque is spoiled, deserted or demolished for any cause or wrongly put to any use other than worship of Allah, still it remains a mosque. At one time, the infidels of Makkah had spoiled the Holy Kaaba by idol worship and their ignoble practices while moving around the Kaaba during Tawaf. However, that did not detract the Kaaba from its character as the Holy House of Allah. Ibn-e-Hamam has expressed the view that Abu Yousuf and majority of the scholars had formulated their arguments with reference to the position of the Holy Kaaba, that it was the consensus of opinion that its site could never cease to be a mosque or shifted from the city. The relevant quotation reads as under:---

واستل ابو يوسف وجهور العلماء بالكعبة فان الاجماع على عدم خروج
موضعها عن المسجدية والقرية.

(Fathul Qadeer by Ibn-e-Hamam, Vol.6, page 237).

39. As mentioned in para. 20 above, after migration to Madina, the Holy Prophet (s.a.w.s.) first got a mosque built at Quba and then another one at Madina (Masjid-e-Nabvi). At that time, the city of Makkah and the Holy Kaaba were in occupation of infidels --- the powerful enemies of Islam who had spoiled it by idol worship. Had shifting of the site been permissible, then that was the most expedient time to relocate the Holy Kaaba at or near Madina. However, this was not done or even thought of. The Holy Prophet (s.a.w.s.) and his companions, despite grave apprehensions of harm at the hands of their enemies, travelled towards Makkah for performing Umra. This Sunnah of the Holy Prophet (s.a.w.s.) also established that the site of the Holy Kaaba could not be shifted. Moreover, according to the tradition narrated by Ibn-e-Umar (quoted above) the land forming subject-matter of an ordinary Wakf cannot be sold.

gifted or inherited because after creation of Wakf the title of the owner is extinguished and the property vests in Almighty Allah. Hazrat Umar-bin Alaas (r.a.a.) had also dedicated his property in the name of Allah and made a will that it could not be sold, gifted or inherited and that no body had any authority to bring about any change therein and that it had to be maintained as such for ever (Narration No.19418, Pages 377-78 Musannaf A. Razzaq). The above principle applied to mosques with greater force. Mosques belong to Almighty Allah exclusively and cannot be sold, gifted, mortgaged, exchanged or inherited and have to be permanently maintained, protected and preserved at the original sites. The element of permanence preserves the spirit of sanctity of mosques. The concept of shifting from one place of another is relevant only in respect of movable property, persons, cattle and cattle etc. The land or site of a mosque or house is fixed in the earth and it is humanly impossible to remove it from there and graft it elsewhere. Even in case of alienation of an ordinary immovable property through sale, exchange, gift or inheritance only the title is transferred from one person to another but the property remains at its original place. At the most, the built up structure can be demolished and the Malba removed from the site. There is considerable weight in the argument raised by the learned counsel for the petitioners and the learned amicus curiae that the concept of shifting of mosques, if recognised, may provide valid cover for desecration and destruction of mosques throughout the world. They have rightly urged that the recent demolition of the Babri Mosque in India and open declarations of extremist Hindus (belonging to a certain political party in India) regarding their intentions to demolish thousands of other mosques, cannot be lost sight of. In his article titled "Rising Hindu Fanaticism" Mr. Ghani Eirabie has referred to the report of the Newsweek Magazine of May 26, 1993 regarding extremist Hindus' designs to demolish another three thousand mosques situated in India. (published in the daily "The News" International, Lahore, dated 4-12-1995). The author has cautioned the feuding politicians of Pakistan about the rising storm of Hindu fanaticism across the border.

40. The second question whether the site of a mosque can be abandoned, alienated or put to any other use is intimately linked with the first one. The necessary corollary of the principle, "once a mosque always a mosque" is that the site of a mosque remains Wakf perpetually which can never be abandoned, alienated or put to any other private or public use. The abandonment of a mosque is strongly condemned by Almighty Allah in Verse No.2/114 quoted in para. 23, page 35 above. Even if a mosque is demolished or becomes deserted due to shifting of the population or for any other cause, it remains a mosque and its sanctity has to be preserved as per the injunctions of the Holy Qur'an and traditions of the Holy Prophet (s.a.w.s.). Taking the extreme example of a spoiled and demolished mosque located in a deserted village from where the population including the cultivators had shifted, Ibne-e-Hamam said that according to Abu Yousuf it remained a mosque in its present condition and added that the same was the view of Imam Abu Hanifa,

Imam Malik, and Imam Shafee. The relevant part from his book reads as under:---

يبقى مسجدا على حاله عند ابى يوسف و هو قول ابى حنيفه و مالك
والشافعى

(Fathul-Qadeer by Ibne-e-Hamam, Vol.6, page 236).

A similar view was expressed by Imam Jaffar Sadiq that a mosque differed from other Wakf properties and could not be sold even if it was spoiled and the population of the area or the city had shifted from there; that the place would remain in mosque because human ownership qua it had ended and its title vested in Almighty Allah (Fiqh-ul-Imam Jaffar Sadiq, Vol.V, page 77 by Muhammad Jawwad Mughnia published at Beirut in 1966). In this connection, I may refer to the juristic opinions and Fatawa of some other well-known Muslim Jurists, Scholars and Muftis:

41. The book "Ahkam-e-Shariat", Pt.II, page 226 contains the following question put to Aala Hazrat Maulana Ahmad Raza Khan Brelvi:

"ایک گاؤں میں مسجد بالکل ویرانہ میں ہے اس کے متصل ایک کھار کا مکان ہے۔ مسجد مذکور میں نماز بھی نہیں ہوتی۔ بلکہ اس کے ارد گرد لوگ کوڑا وغیرہ ڈالتے ہیں۔ وہ کھار زمین مسجد خریدنا چاہتا ہے۔ آیا اس کی بیع ہو سکتی ہے یا نہیں۔"

He answered it in the following words:---

"حرام ہے اگرچہ زمین کے برابر سونا دے۔ مسجد کے لئے جو لوگ ایسا کریں ان کی نسبت قرآن عظیم فرماتا ہے: لھم فی الدنیا خزی و لھم فی الاخرہ عذاب عظیم "دنیا میں ان کے لئے رسوائی ہے اور آخرت میں بڑا عذاب۔"

The following question was put to Maulana Rashid Ahmad Gangohi about a very small and abandoned mosque:

سوال ایک مسجد تعداد دو گز کی طویل ہے اور ایک گز کی عریض ہے۔ اور ویران ہے۔ نماز اور اذان کبھی اس میں کچھ نہیں ہوتی ہے۔ تو اگر اس کو متولی مسجد فروخت کر کے دوسری مسجد کہنے کلاں میں قیمت اس کی لگا دیں یا اینٹیں اس کی لگا دیں اور زمین میں اس کی دوکان واسطے صرف مسجد کہنے کے بنوا دیں تو جائز ہیں یا نہیں یا تحریر فرمائیں۔ کہ اس زمین کو کیا کیا جاوے۔ جب کہ اینٹیں وغیرہ کی اجازت حضور کی دوسری مسجد کو ہو جاوے۔"

(فتاویٰ رشیدیہ، صفحہ 212)

His answer was as follows:---

جواب مسجد کی بیع حرام اور باطل ہے کسی حال بیع نہیں کر سکتے۔ خواہ وہاں اذان، نماز ہوتی ہو یا نہ ہوتی ہو یا ویران ہو فقط واللہ تعالیٰ اعلم۔"

In Fatawa Naziria, Vol.I, page 385, a question about the sale of site of a deserted mosque was answered by Sayyed Muhammad Nazir Hussian Mohaddis Dehlvi (called Sheikh-ul-Kul by Ahl-e-Hadees School of Thought) in the following words:

"مسجد اگر منہدم اور ویران ہو جائے تو اس کا نام و نشان بھی موجود نہ رہے۔ تب بھی وہ زمین مسجد کی تابعدار آباد مسجد ہی رہتی ہے اور وقف ہونے سے خارج نہیں ہوتی اور بیع و شرا اس کی حلال نہیں ہے علی الاصح اگر واقف مر جائے تو اس کے وارثوں کی ملک میں نہیں آتی۔"

In Majmua Al-Fatawa by Maulana Abdul Hayee (Vol.I, page 205) a question about a deserted mosque and use of its Malba for construction of another mosque was answered in the following words:---

"جائز نہیں کیونکہ مسجد منہدم کا اسباب وقف ہے اور وقف میں کسی کو تصرف کرنا جائز نہیں۔ اہل اسلام کو لازم ہے کہ بقدر ہمت و وسعت اسی مسجد منہدم کی تعمیر کر دیں اور اس کا اسباب اسی میں لگا دیں کہ ادھر سے گزرنے والے مسلمان اس میں نماز ادا کریں بلکہ نئی مسجد کے بنانے سے پرانی مسجد کو درست کرنے میں زائد ثواب ہے۔"

In Ahsan-ul-Fatawa, Mufti Rashid Ahmad Ludhianvi answered a question about excluding a part of the land from a big mosque for construction of a house for Imam Masjid in the following words:---

"جو زمین ایک دفعہ مسجد میں داخل ہو چکی ہے وہ قیامت تک کے لئے مسجد ہی رہے گی کسی بھی ضرورت کے لئے اسے مسجد سے خارج نہیں کیا جاسکتا۔"

Again, the following question was put to Abdül Khair Muhammad Noorullah Naeemi:--

"کیا فرماتے ہیں علمائے دین و مفتیان شرع تعین اس میں کہ ایک چھوٹے گاؤں کے مالک چاہتے ہیں کہ اپنے گاؤں کی مسجد کو تبدیل کریں یعنی نئی مسجد تعمیر کریں اور پہلی مسجد کو اپنے تصرف میں لائیں آیا شرعاً جائز ہے یا نہیں۔ کسی نے ہمیں کہا ہے کہ بشت بھر مسجد کی زمین کھود کر دفن کر دیں اور مسجد کی اس جگہ کو اپنے تصرف خاص میں لاسکتے ہیں۔"

He answered it as follows:---

"..... سخت حرام ہے..... آئمہ کرام و فقہائے عظام فرماتے ہیں کہ مسجد ہمیشہ کے لئے مسجد ہی رہے بدل نہیں سکتی..... اگر آبادی ویران ہو جائے وہاں کوئی نہ رہے تو مسجد پھر بھی مسجد ہی ہے

..... وہ صرف باشت بھر کو ہی مسجد سمجھے ہوئے ہیں مگر علقاً "وَقُلْنَا" یہ باطل در محض باطل ہے۔..... فقہائے کرام فرماتے ہیں کہ مسجد آسمان کی بلندی اور زمین کے نیچے تک مسجد ہی ہے۔..... اگر مسجد موجودہ کو قائم رکھیں اور نئی مسجد تیار کریں جس سے موجودہ غیر آباد ہو تو پھر بھی ناجائز ہے۔ کہ مسجد کی تحلیل و دیرانی گناہ ہے۔"

(فتاویٰ نوریہ) Vol I صفحہ 137

I have referred to the relevant parts of the reply omitting the reasons contained therein.

42. Leaving aside the juristic opinions and Fatawa of a number of other Muslim jurists and religious scholars, I may briefly refer to the controversy which had arisen during the pre-partition days in respect of a mosque situated in Machhli Bazar, Kanpur. A part of the mosque was excluded from it because some of the trustees had agreed to surrender it to the Government and the Municipal Committee took over its possessions and tried to utilise it for construction of a road. This move was resisted by the Muslims and in the ensuing incidents some Muslims were martyred and others arrested. At that time, one religious scholar Abdul Bari who was keen to avoid further killing of Muslims and wanted settlement with the Government expressed the opinion that for the time being none of the parties be held entitled to get the land and that the same be allowed to remain in possession of the Municipality which shall ultimately decide the question of entitlement in accordance with the principles of Islamic Law. This reconciliation formula was severely criticised by Imam Ahmad Raza Brelvi in his famous booklet known as (ایضاً المتواری فی مصالح عبد الباری) He expressed the view that the part of the mosque could not be put to any other use and that it remained a mosque for all times to come. He added that it was abhorrent for a Muslim scholar to agree that for the time being the land be not treated as Muslim Wakf. He firmly expressed the view:---

کسی مسجد کی کوئی زمین ہرگز ہرگز راستہ، سڑک، ریل، نہر غرض کسی دوسرے کام کے لئے نہیں لی جاسکتی۔ مسجد حقیقتاً "زمین کا نام ہے۔ چھت اس کا بدل نہیں ہو سکتی۔ نہ ہرگز کسی دوسری زمین یا دس لاکھ روپے گز قیمت خواہ کسی شے سے اس کا بدل لیا جاوے۔ اگر ایسا نہ کیا تو یہ مسجد اور اس کے سوا جب کبھی کسی مسجد کو عالم اور اس کے ساتھی مسلمانوں کی اس کلروائی سے صدمہ پہنچے ہمیشہ ہمیشہ تباہ کئے دنیا اس کی ایک ایک بے حرمتی کاروانہ گناہ عظیم ان کے نامہ اعمال میں ثبت ہوا کرے گا اللہ کی پناہ اس حالت سے کہ قبریں بڑیاں بھی نہ رہیں اور ہر لمحہ پر "من اظلم من منع مسجد اللہ ان یدکر فیہا السمیع فی خرابہا" کا وبال عظیم دنیا سے قبر اور قبر سے حشر تک پیچھا نہ چھوڑے۔

43. Recently on 13th of Rabi-us-Sani, 1403 Hijri, a question regarding demolition of mosques built on State land without permission of the

Government was answered by Mufti Wali Hassan Tonki. He expressed the view:---

یہ مساجد شرعاً مساجد ہیں ان کو اب نہ منہدم کیا جاسکتا ہے اور نہ دوسری جگہ منتقل کیا جاسکتا ہے۔ قیامت تک یہ مساجد ہیں۔

He further stated that:---

عام طور پر جب مساجد بنائی جاتی ہیں تو ان کے بارے میں کاغذات متعلقہ محکمہ جات میں داخل کئے جاتے ہیں اور ان سے اجازت طلب کی جاتی ہے اور حکومت کی طرف سے جواب نہیں آتا۔ حکومت کی طرف سے یہ سکوت اذن شرعی کے مترادف ہے۔

The view expressed by him was approved by 148 religious scholars from the Provinces of Sindh, Punjab and Balochistan and 25 scholars of Azad Jammu and Kashmir.

44. Thus the Injunctions of the Holy Qur'an, Sunnah of the Holy Prophet (s.a.w.s.), as interpreted by Muslim Jurists firmly establish the principle that once a mosque always a mosque; that site of a mosque can never be shifted or abandoned or put to any other private or public use.

45. The answer to the third question: whether a mosque or a building called or built as a mosque, can be demolished, is in the affirmative. The circumstances or reasons justifying demolition of a mosque or a building called mosque, are enumerated below:---

(i) OLD OR DANGEROUS STRUCTURE:

If the building of a mosque becomes very old and dangerous or has to be redesigned to convert it into a multi-storeyed mosque in order to accommodate more persons, it may be pulled down for the purposes of construction at the same site.

(ii) EXTENSION OF THE MOSQUE:

If the number of Namazis increases with the passage of time and there is genuine necessity of expanding the mosque, it may be demolished partly or wholly for extension, in accordance with the law of Sharia.

(iii) AMALGAMATION OF MOSQUES:

If two or more mosques are located nearby, the same can be amalgamated for construction of a bigger or Jamia mosque provided that land/property lying in between the pre-existing mosques is also

permanently dedicated in the name of Allah for mosque. In that eventuality old structures can be pulled down and a new one built after joining together the sites of the old mosque and the other land dedicated for mosque. If a number of mosques are situated at distant spots of a locality, then the same cannot be demolished for building a central Jama-e-mosque in that locality.

(iv) DURING WAR TIME:

A mosque may be accidentally damaged or demolished in the process of war or the exigencies of war may necessitate its demolition for the natural security. Despite demolition, the site will remain a mosque and after cessation of active war Muslims will be duty bound to reconstruct it at the same site.

(v) MASJID-E-ZARRAR:

A building or site though called or declared to be a mosque, if the same is not genuinely dedicated for the purposes of worship of Allah but made for certain ulterior motives of dividing, damaging or deceiving the Muslims then such a "mosque" can be legitimately pulled down. The Islamic history contains one example of such a mosque which was built near Masjid-e-Quba and the builders invited the Holy Prophet (s.a.w.s.) to say prayers there. However, Almighty Allah informed the Holy Prophet (s.a.w.s.) about the true designs of the builders and forbade him from going to the said mosque. In this connection, the relevant Verse of the Holy Qur'an is reproduced below:---

والذين اتخذوا مسجدا ضارا او كفرا وتفرقا بين المؤمنين وارضاء الله ورسوله من قبل وليحلفن ان اردنا الا الحسنى والله يشهد انهم لكنبون لا تقم فيه ابدا"----- (سوره توبه آيات 107, 108)

It means:---

"And there are those who put up a mosque by way of mischief and infidelity--To disunite the Believers--And in preparation for one Who warred against Allah and his Apostle aforetime. They will indeed swear that their intention is nothing But good; but Allah doth declare That they are certainly liars. 107. Never stand though forth therein "....(108).

Simultaneously the Holy Prophet (s.a.w.s.) was ordained by Almighty Allah to stand for prayers in the mosque founded on Taqva or piety or fear of Allah mingled with love and reverence for him. At that time, such a mosque was the one built at Quba, though the command of Allah is general in nature and

interpreted by Muslim Jurists and Commentators of the Holy Qur'an to be applicable to all mosques. The said command reads as under:---

مسجداً أسس على التقوى من أول يوم أحق أن تقوم فيه رجال يحبون أن يتطهروا والله يحب المطهرين — (سورة توبه ' آيت نمبر 108)

It means:--

"There is a mosque whose foundation was laid from the first day On piety; it is more worthy for thy standing forth (for prayer) Therein. In it are men who Love to be purified; and Allah Loveth those who make themselves pure."

These two commands of Almighty Allah read together leave no manner of doubt that a building though called a mosque or looking like a mosque, if meant to cause harm to Muslim Umma, promote infidelity divide Muslims or use it as a place for waging war against Allah, the Holy Prophet (s.a.w.s.) or His followers, then it is not a Sharaee mosque and deserves to be razed to the ground. Hence, if a non-Muslim builds a structure like a mosque, announces the call for prayers through Azaan, prayers are led by a non-Muslim Imam though having Muslim trappings, it would be an obvious deception and prayers offered behind such a non-Muslim Imam would go waste. This would be the worst kind of Zarrar to Muslims as in the above situation, they would be failing in performance of their prime obligation of offering prayers in congregation as ordained by Almighty Allah and the Holy Prophet (s.a.w.s.). To avoid such a situation, persons belonging to Qadiani or Lahori Groups (who call themselves Ahmadis) have been prohibited from reciting Azaan used by Muslims or calling their place of worship as a Masjid. If they do so they can be punished under section 298-B of the P.P.C.

46. In this connection, another command of Allah is relevant which is reproduced below:--

ما كان للمشركين ان يعمرو مسجداً الله شهدين على انفسهم بالكفر اولئك حبطت اعمالهم وفي النار هم خالدون — (سورة توبه ' آيت 17)

It means:--

"It is not for such As join gods with Allah, To maintain The mosques of Allah while they witness against their own souls To infidelity. The works of such bear no fruit: In Fire shall they dwell."

This command clearly prohibits non-Muslims from establishing or maintaining a mosque because due to their Kufr or infidelity their acts go waste and bear no fruit and they are destined to dwell in hell eternally. After the above-referred commands of Almighty Allah, the Holy Prophet (s.a.w.s.) ordered that Masjid-e-Zarrar be pulled down

and accordingly it was razed to the ground. To show contempt for the ignoble designs for which Masjid-e-Zarrar was built, the said place was used in future as a filth depot.

(vi) TEMPORARY OR PROVISIONAL ARRANGEMENTS:

If a piece of land is allowed to be used by the owner for offering prayers temporarily or provisionally, then even if some structure is raised thereon it can be pulled down as soon as the owner withdraws the permission or the period, if any, fixed for use of the property expires. Same is the position of the rented building used for offering prayers. However, it can be got vacated or demolished in accordance with the prevailing rent laws. In such cases, the property does not lawfully become a mosque and can be put to any other use as desired by the owner. Sometimes roads, parks or open places are provisionally allowed to be used for offering prayers but such user does not convert the properties into mosques.

(vii) UNAUTHORISED CONSTRUCTION:

If the property is not permanently dedicated by the owner in the name of Allah but unauthorised construction is raised thereon in the shape of a mosque, it can be pulled down. However, if the owner does not object to the use of the property as a mosque for a fairly long period, then it may imply his permission and dedication of the property as a mosque and deprive him of his right to reassert his own title. The question whether the title of the owner is extinguished by the long user of the property as a mosque depends on the peculiar facts and circumstances of each case.

47. Apart from the above-referred seven situations, a mosque cannot be demolished, abandoned, changed, shifted or utilized for any other private or public purpose. It is often said that in the modern complex societies, growth and development of new cities and towns sometimes necessitates demolition of a mosque and utilisation of the site for laying railway lines or constructing roads, streets, bridges or airports etc. Hence, the principle "once a mosque, always a mosque" should not be rigidly applied. The argument though apparently attractive is essentially misconceived. In such a situation, a choice has to be made between two options, first; to desecrate a mosque in violation of the commands of Almighty Allah and, second; to change the direction or location of the Railway lines, roads etc. The answer is obvious that the commands of Allah --- the true and supreme law of the country, can never be violated. Therefore, a mosque cannot be desecrated, demolished or put to any use other than worship of Allah as ordained by him. Hence the direction of a Railway line, road or a street has to be changed. This is not difficult either because the experts in the field of town planning and engineering can conveniently find out

alternative ways and means so as to protect the pre-existing mosques. It is said, "If there is a will, there is a way". This was demonstrated in the pre-partition days in the sub-continent of Indo-Pakistan when lay-outs of Railway lines, roads, streets and bridges were always designed so as to keep the old mosques intact. Generally, this care has to be shown even in respect of places of worship of other communities like Christians, Jews, Hindus and Sikhs etc. as implied Verse No.40 of Sura Al-Haj. It reads as follows:---

ولولا دفع الله الناس بعضهم ببعض لهدمت صوامع وبيع وصلوات ومسجد
يذكر فيها اسم الله كثيرا (سورة الحج آيت نمبر 40)

It means:---

"Did not Allah check one set of people by means of another, there would surely have been pulled down monasteries, churches, synagogues, and mosques, in which the name of Allah is commemorated."

In this Verse Allah has referred to his own invisible ways of checks and balances for existence of places of worship. It is settled law that houses and properties of the citizens, which can otherwise be sold, gifted or inherited, cannot be usurped or forcibly utilised for constructing a mosque or House of Allah then how can a mosque belonging to Almighty Allah which cannot be sold, gifted or inherited by any human being, be usurped or utilised by citizens for any purpose other than worship of Allah or purposes connected therewith. As per the well-known tradition of the Holy Prophet (s.a.w.s.) usurpation of even a small piece of land forcibly shall be visited by severe punishment on the Day of Judgement. He said:---

عن عمرو بن نفيل ان رسول الله صلى الله عليه وسلم قال من اقتطع شبرا
من الارض ظلما طوقه الله اياه يوم القيمة من سبع ارضين (صحيح مسلم از
شرح علامه نووي رحمه الله عليه حديث نمبر 86)-

Umar Bin Nafeel narrated from the Holy Prophet (peace be upon him) who stated that if a person forcibly usurps a span of land then Almighty Allah will put around his neck seven earths on the day of judgement. The simile of seven earths was used to indicate the heaviest and unbearable burden of punishment.

48. Keeping in view the letter and spirit of the above-referred command of Allah and tradition of the Holy Prophet (s.a.w.s.) Muslim Caliphs used to take care that non-Muslims' places of worship should not be demolished or usurped. Hazrat Abu Bakar Siddiq (r.a.a.) gave following instructions to Muslim army, sent towards Palestine under the command of Hazrat Usama (r.a.a.):---

"I enjoin upon you the fear of God. Do not disobey, do not cheat, do not destroy churches

(quoted from the book "The Muslim Conduct of State" by Dr. Muhammad Hamidullah, 7th Revised Edition, page 651, published by Sh. Muhammad Ashraf, Lahore).

Similarly when Bait-ul-Maqdas was conquered during the reign of the Second Caliph, Hazrat Umar (r.a.a.), he allowed the following concessions to Christians:

"یہ وہ امان ہے جو خدا کے غلام امیر المومنین عمرؓ نے ایلا کے لوگوں کو دی یہ امان ان کی جان و مال، مگر جاصلیب، تدرست، پیارا اور ان کے تمام مذاہب والوں کے لئے ہے اس طرح یہ کہ ان کے گرجاؤں میں نہ سکونت کی جائے گی نہ وہ ڈھائے جائیں گے نہ ان کو، نہ ان کے احاطے کو کچھ نقصان پہنچایا جائے گا۔ نہ ان کے صلیبوں کو، نہ ان کے مال میں کچھ کمی کی جائے گی۔ مذہب کے بارے میں ان پر جبر نہ کیا جائے گا۔ نہ ان میں سے کسی کو نقصان پہنچایا جائے گا....."

(quoted from the book Mazaahib-e-Aalam by Ahmad Abdullah Almasdusi Maktaba-e-Khuddam-e-Millat, Karachi, page 423)

Due to the generous treatment of the Caliph Umar (r.a.a.) the Bishop allowed him to say prayers in the Church but he did not accept the offer lest it might become a precedent and prompt Muslims to convert the church into a mosque.

49. The solitary case regarding the alleged shifting of the mosque situated at Kufa during the Caliphate of Hazrat Umar (r.a.a.) has been cited by Malik Muhammad Nawaz, Advocate, who appeared in the case as an amicus curiae. It pertains to an incident of theft in "Bait-ul-Maal" located either in the Kufa Jam-e-Mosque or at close proximity to residential palace of Hazrat Saad Bin Abi Waqas (r.a.a.), the then Governor of Kufa, who reported the matter to the Caliph, soliciting his order regarding the sentence to be awarded to the thief. The Caliph reportedly wrote back that "Hadd" of cutting the hand be not inflicted on the thief as he had a share in the "Bait-ul-Maal" and that the mosque be changed so as to bring "Bait-ul-Maal" towards the "Qibla". The said incident has come down to us through two important sources; first, the famous historian Tabri (born in 224 Hijra died in 310 Hijra) and second, Sheikh-ul-Islam Imam Ibn-e-Taimia (born in 661 Hijra --- died in 728 Hijra). In "Tareekh-ul-Tabri", this incident is narrated at pages 44 to 46 of Vol.IV. Its narration from Sheikh-ul-Islam Ibn-e-Taimia is contained in the book "Majmoo Fatawa Sheikh-ul-Islam Ibn-e-Taimia, Vol.XXXI, pages 215, 216 and 222. The same narration has been given by Ibn-e-Quddama in his book called "Almughni".

50. Before accepting the correctness of the narrations of the incident by Ibn-e-Taimia and Tabri and the subsequent action taken in the matter under the order of the Caliph, first of all we must carefully examine the authenticity of the narrators, as well as all available facts of the case for drawing correct

conclusions therefrom. Since, Ibn-e-Taimia enjoys high status as a Muslim Jurist, I will discuss and analyse his narration first.

51. The chain of narrators given by Imam Ibn-e-Taimia is as follows:---

حدثنا الخلال ثنا صالح بن احمد ثنا ابي ثناء يزيد بن هرون ثنا السعودي عن
القاسم

It means:---

"Al-Khalal stated to us that it was narrated to him by Saleh Bin Ahmad, to him by his father, who heard from Yazeed Bin Haroon, to whom it was narrated by Al-Masoodi through Al-Qasim."

In this chain, at least three narrators namely Al-Qasim, Al-Masoodi and Yazeed Bin Haroon cannot be relied upon, for different reasons. The person who had first-hand knowledge about the incident of theft in Bait-ul-Maal at Kufa and the subsequent action taken in the matter under the orders of the Caliph were Hazrat Saad Bin Abi Waqas (r.a.a.), the then Governor of Kufa and Hazrat Abdullah Bin Masud (r.a.a.), the Treasurer of Bait-ul-Maal. Al-Qasim the first narrator is the grandson of Abdullah Bin Masud (r.a.a.). He has not given his source of information regarding the said incident and the orders passed by Hazrat Umar (r.a.a.) in relation thereto. The question arises as to whether Al-Qasim could have possibly learnt about it from his grandfather Hazrat Abdullah Bin Masud (r.a.a.) or even from his own father Abdur Rehman. The answer is in the negative. Abdur Rehman (father of Al-Qasim) was only six years old when his father Hazrat Abdullah Bin Masud (r.a.a.) had passed away in 32/33 Hijra. Being a small child, Abdur Rehman had no occasion to hear any tradition of the Holy Prophet (s.a.w.s.) or sayings of His Companions from his father (Tahzeeb-ut-Tahzeeb by Ibn-e-Hajar, Vol.6 pages 215-216). Since Abdur Rehman had not heard anything from his father, he could not convey anything to his son Al-Qasim. Even otherwise Abdur Rehman himself suffered from the defect of Tadlees, i.e. suppression of the name of teacher or the person from whom he had actually heard some narration. Tadlees is close to deception and makes a narrator unreliable (Kitab-ul-Mudalliseen by Ibn-e-Hajar, page 63, published in Cairo in 1986). Again, Al-Qasim had no occasion to meet any companion of the Holy Prophet (s.a.w.s.) except Jabir Bin Sumra but he used to narrate two traditions of the Holy Prophet (s.a.w.s.) coming from Ibn-e-Umar. Hence, the experts in the matter of judging veracity of narrators considered Al-Qasim to be a "Muddallis" (Tahzeeb-ut-Tahzeeb, Vol.8, page 321). Even Imam Ahmad Bin Hambal said that among the narrations of Al-Qasim many are unreliable which merit rejection (كتاب العلل ومعرفت الرجال Vol.1, page 205). The narrations coming from Al-Qasim in the matter of Nisaab pertaining to theft (minimum value of stolen property justifying cutting of hand of the thief) are rejected by Imam Tirimzi on the ground that Al-Qasim's father was only 6 years old when his grandfather Abdullah Bin Masud had died. On a parity of

reasoning the narration coming from Al-Qasim regarding theft in Bait-ul-Maal should be rejected just as his narration regarding Nisaab of theft is rejected.

52. The next narrator is Al-Masoodi whose name is Abdur Rehman son of Abdullah son of Utba son of Abdullah Bin Masood. Generally, he is treated as Saqa or reliable but unfortunately in the later part of his life he became mentally confused and used to mix up facts which made his narrations unreliable. Ibn-e-Numair, a famous Mohaddiss and expert in judging the veracity of narrators declares as under:---

”كان ثقہ واختلط باخبره سمع منه ابن مہدی و یزید بن ہارون احادیث مختلطہ“

Meaning thereby that he was trustworthy but in the last period of his life, he used to mix up (true and untrue narrations). Ibn-e-Mehdi and Yazeed Bin Haroon had heard confused narrations from him. The incident after which Al-Masoodi's mind was adversely affected has been narrated by Abu Nazar Hashim Bin Al-Qasim. He stated that he knew the day when Al-Masoodi became mentally confused. He explained that one day they were with Al-Masoodi who was consoling his son when in the meanwhile a person came and informed him that his servant had run away with his money amounting to 10,000. He was shocked, stood up and entered his house. Later, he came out and was mentally confused (Tahzeeb-ut-Tahzeeb, Vol.6, pages 210-212). As mentioned above, Yazeed Bin Haroon had heard narrations from Al-Masoodi when he had become mentally confused. Therefore, in the chain of narrators Al-Qasim, Al-Masoodi and Yazeed Bin Haroon cannot be relied upon and deserve to be excluded. Resultantly, the chain of narrators is broken and the entire narrations contained in Fatawa Ibn-e-Taimia regarding the alleged theft in Bait-ul-Maal at Kufa and the action taken in compliance with the direction issued by Hazrat Umar (r.a.a.) becomes unauthentic and merits rejection.

53. In the like manner narration of the incident contained in Tarikh-ut-Tabri (Vol.IV, pages 44 to 46), does not appear to be reliable. Tabri's chain of narrators is as follows:---

”Al-Sirri reports from Shoaib, he from Saif and Saif from Muhammad, Muhammad Talla, Al-Mohlab, Umar and Saeed.”

54. Ibn-e-Hajar in his book "Lissaan-ul-Meezaan" (Vol.III, pages 12 & 13) says that according to Ibn-e-Adi, Al-Sirri was not reliable. Shoaib is "Majhool" or unknown person as mentioned by Az-Zahadi, in his book "Dewan-ul-Zoafawal-Matrookeen, page 143, published at Makkah. It may be mentioned that an unknown narrator is considered to be worse than a weak one. The famous expert in "Asmaa-ur-Rijaal" Ibn-e-Habban writes that Saif (Saif Bin Umer) used to fabricate narrations and people considered him to be Zindeeq (a person outwardly Muslim but inwardly a Kafir or infidel). In the book "Alkashif Wal-Hasees" by Burhan-ud-din Al-Halabi (Vol.52, pages 204 and 210), it is said that Saif-bin-Umer was like "Waqdi" (Muhammad Bin, Umer Alwaqdi) and about

Waqdi it is stated at page 396 of the same book that he used to concoct Ahadith and that there was consensus of opinion among the jurists regarding the weakness of traditions coming from Waqdi. In the foreword of his famous book on the life of the Holy Prophet (s.a.w.s.) Maulana Shibli Naumani has discussed Al-Waqdi and opined that he deserved to be ignored. The relevant extract from Shibli's book is reproduced below:---

”ان میں سے واقدی تو بالکل نظر انداز کر دینے کے قابل ہے۔ محدثین بالاتفاق لکھتے ہیں کہ وہ خود اپنے جی سے روایتیں گھڑتا ہے اور حقیقت میں واقدی کی تعریف خود اس بات کی شہادت ہے ایک ایک جزئی واقعہ کے متعلق جس قسم کی گونا گوں اور دلچسپ تفصیلات بیان کرتا ہے۔ آج کوئی بڑے سے بڑا واقعہ نگار چشم دید واقعات اس طرح قلمبند نہیں کر سکتا۔“

Similarly Maulana Saeed Akbar Abadi has discussed Saif Bin Umer and Muhammad Bin Umar Al-Waqdi in his book "Usman Zunnorain", pages 37 to 40 and declared them as liars and unreliable persons. Since three important narrators namely Al-Sirri, Saif Bin Umar and Muhammad Bin Umar Al-Waqdi are not trustworthy and one narrator "Shoaib" is unknown, narration of incident coming through them cannot be relied upon for laying down a rule of Islamic Fiqh.

55. Due to abovementioned infirmities qua the narrators, the narrations of the incident given by Tabri and Iman Ibne Taimia cannot be made a sound basis for laying down rule of law regarding shifting of mosque from one place to another.

56. The Muslim Jurists lay emphasis that the events recorded in history books or the commentaries of the Holy Qur'an cannot be relied upon for deducing the rules of Islamic Fiqh. In this connection, the view of Imam Ahmad Bin Hambal is:

”تدبیر لیس لها اصل التفسیر والملاحم والمغازی“

(Book, اسرانیات والموضوعات فی کتاب التفسیر)

by Dr. Ash-Sheikh Muhammad Abu Shahba published by Maktaba-tus-Sunnah, Labenon, page 147). Meaning thereby that for the purpose of deducing rules of the Islamic Fiqh, the aboverffered three types of books cannot be considered "trustworthy". A similar view has been expressed by Maulana Muhammad Abdul Aziz Muhammadi in his book "حسن البیان" published by Ahl-e-Hadees Academy Kashmiri Bazar, Lahore:---

”تاریخ بھی ہمارے پاس اسی قسم کی اسانید کے واسطے سے پہنچی ہے تاریخ طبری اور البدایہ والنہایہ مسعودی وغیرہ میں اسانید کا خالص التزام کیا گیا ہے۔ لیکن یہ رواۃ اور اسانید احادیث کے رواۃ اور اسانید کا مقابلہ نہیں کر سکتے نہ ہی اس پر اس قدر محنت کی گئی ہے اس کی وجہ ظاہر ہے کہ حدیث حجت شرعی ہے اور تاریخ شرعاً حجت نہیں۔“ (صفحہ 20)

Perhaps for the same reason, Ibne Taimia and Ibne Quddamma have not referred to Tabri's history book while mentioning the case of theft in Bait-ul-Maal at Kufa and the alleged shifting of the mosque. Imam Ibne-e-Taimia has given his independent chain of narrators, some of whom, as discussed above, are not reliable.

57. It is significant to mention that the narration regarding incident of theft in Bait-ul-Maal at Kufa and the action taken under the order of Hazrat Umar (r.a.a) finds no mention in "Siha-e-Sittah" or other books of Ahadis including Mawwatta, Behqi, Dar Qutni etc. It is absent from Musnad Imam Ahmad Bin Hambal, which contains about 40,000 narrations. Similarly, a number of books written on the life history of Hazrat Umar (r.a.a), his Fiqah and Court decisions do not contain the said narration. Ibn-e-Jezi did not mention it in his biography of Hazrat Umar (r.a.a). Same is the position of Akhbar-e-Umar written by Al-Tantavi.

58. In modern times Muhammad Abdul Aziz Al-Halavi has written a book called (فتاویٰ واقضیہ عمریہ), published at Cairo but he does not refer to the incident of theft in Bait-ul-Maal at Kufa in the chapter relating to rules about mosques. Another book, "Fiqh Hazrat Umar" written by Dr. Muhammad Kawaas Qallaa Jee, Professor, University of Petroleum and Minerals Zehran, Saudi Arabia (Urdu translation published by Idara Maarif-e-Islam, Mansura, Lahore) mentions the incident of theft in Bait-ul-Maal at Kufa on the authority of Abdur Razzaq Bin Hamam (born 126 Hijra, died 211 Hijra) but does not mention the later part of alleged shifting of the mosque under the orders of Hazrat Umar (r.a.a.). Same is the position of the book written by Dr. Arreheli on "Fiqh Umar" (published at Makkah Mukarramma). Again the later allegedly written by Hazrat Umar (r.a.a) to Hazrat Saad Bin Waqas (r.a.a) regarding change/shifting of the mosque is not contained in the well-known Arabic book (مجموعہ رسائل العرب) written by Ahmad Zaki Sifwat (Published in Egypt) which contain the entire official correspondence pertaining to the periods of the Holy Prophet (s.a.w.s) and his four Caliphs. However, the said letter of Hazrat Umar (r.a.a) is contained at page 192 in the book (حضرت عمرؓ کے سرکاری خطوط) (compiled by Khursheed Ahmad Fariq, published by Nadwat-ul-Musannifeen Dehli). The author has taken the same from Tabri and as discussed above Tabri's narration is not reliable. Moreover, Ibn-e-Hazam in his book Almohalla, Abdur Razzaq and Ibne-e-Abi Shaiba in their books called "Musannaf" (both, books of Ahadis) have mentioned only first half of the incident regarding theft in Bait-ul-Maal and the order of Hazrat Umar (r.a.a) that Hadd of cutting hand of the thief be not inflicted. Same is the position of Kanzulummal, the famous encyclopaedia of Ahadis. In Kanzulummal the incident of theft has been mentioned on the authority of Abdur Razzaq and Ibne-e-Abi Shaiba. Abdur Razzaq has made narration of incident from Ibne-e-Joraj who heard it from Mehras-bin-Al-Qasim who heard it from a number of reliable persons (names not given) (Musannaf, Vol.10, page 212, Narration No. 18874). Obviously, the chain of narrators is

broken as names of a number of other reliable persons are not stated. In his book "Kitab-ul-Khiraj" Qazi Abu Yusuf has also stated the first half of the narration regarding theft in Bait-ul-Maal and direction of the Caliph that hand of the thief be not cut off, on the authority of Al-Masoodi and Al-Qasim. Had Al-Qasim, said anything regarding the order of Hazrat Umar (r.a.a) to shift the mosque, Qazi Abu Yusuf who had personally heard the narration from Al-Masoodi must have stated it. Moreover, as discussed above, Al-Qasim had no occasion to hear any narration from his father Abdur Rehman and being a Mudallis, could not be relied upon. The fact that the second half of the narration regarding order of Hazrat Umar (r.a.a) is absent from the authentic books, of Ahadis, Aasar, history books and other authentic books containing official correspondence pertaining to the period of Hazrat Umar (r.a.a) goes a long way to establish that the said part of the narration was either a subsequent erroneous addition or an outcome of Al-Masoodi's confused state of mind.

59. For the above reasons, the alleged incident of theft in Bait-ul-Maal at Kufa and the supposed subsequent action taken under the orders of Hazrat Umar (r.a.a) deserved to be ruled out of consideration. At any rate it cannot be made a safe basis for deriving a rule of Islamic Fiqah regarding shifting of mosque from one place to another.

60. In order to settle the controversy finally, I also propose to discuss the narrations of the incident coming from Imam Ahmad Bin Taimia and Tabri on merits as well. Since Ibn-e-Taimia is a Mohaddis and Jurist, I will take up his narration first.

61. The incident of theft is referred to in the Fatawa by Ibn-e-Taimia at pages 215 and 216 in the following words:-

حدثنا الخلال - ثنا صالح بن احمد ثنا ابي ثناء يزيد بن هرون ثنا السعدي عن القاسم - قال: لما قدم عبدالله ابن مسعود رضى الله عنه على بيت المال كان سعد بن مالك قد بنى القصرة واتخذ مسجداً عند اصحاب التمد قال نقب بيت المال واخذ الرجل الذي نقبه فكتب الى عمر بن الخطاب - فكتب عمر: ان لا يقطع الرجل و انتقل المسجد - واجعل بيت المال في قبلته فانه لن يزال في المسجد مصل فنقله عبدالله - (مجموعه فتاوى شيخ الاسلام احمد بن تيميه جلد 31 صفحات 215, 216)

Al-Qasim narrated that Abdullah bin Masud (r.a.a) was appointed (as Treasurer) for Bait-ul-Maal. Saad Bin Malik got Qasar/Castle built and also made a mosque near Ashaab-ul-Tumar (dealers in dates). Bait-ul-Maal was burgled and the person who had committed the offence was apprehended. Hence, he wrote about the matter to Hazrat Umar (r.a.a) who replied "do not cut off hand of the culprit

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and change the mosque so as to bring Bait-ul-Maal towards Qibla of the mosque because there are always persons offering prayers in the mosque. Hence, Abdullah changed it". Again, at page 216 the incident is tersely reported in these words:---

"يقال ان بيت المال نقب وكان في المسجد فنحول ابن مسعود المسجد"

It means that a theft took place in Bait-ul-Maal which was located in the mosque, hence Ibn-e-Masud changed or modified the mosque.

62. It is noteworthy that all the relevant facts having bearing on the controversy have not been reported. The first quotation shows that after the event of theft, Baitul Maal was ordered to be brought towards Qibla of the mosque. The second quotation makes it clear that the Baitul Maal was already located inside the mosque. On this factual basis the words (وانقل المسجد واجعل بيت المال في قبلته) would simply mean that some internal change or modification be made in the mosque so as to shift it from the earlier place in the mosque and re-locate it towards Qibla of the mosque. Had the mosque been shifted elsewhere then the words (فانه لن يزال في المسجد مصل) occurring at page 216 or the words (فانه لن يتحل من مصل فيه) occurring at page 217 of the Fatawa (Vol.31) would have become redundant or meaningless. The words (محول ابن مسعود المسجد) do not necessarily mean that the mosque was abandoned or shifted. In the case of (تحويل قبله) i.e. change of the Qibla, the Holy Prophet (s.a.w.s) and his followers in the mosque "Qiblatain" changed their directions from Al-Aqsa Mosque towards the Holy Kaaba. Subsequently, internal structural changes were made in Masjid Qiblatain to re-locate the Mehraab to fix the place of the Imam. Likewise, Ibn-e-Masud (r.a.a) made internal changes in the mosque and re-located the Bait-ul-Maal towards Qibla of the mosque.

63. A similar view has been expressed by Maulana Zafar Ahmad Usmani in his book (اعلاء السنن). While referring to the incident of theft and the order of Hazrat Umar (r.a.a) for bringing Bait-ul-Maal towards Qibla of the mosque, he says:---

"لا حاجة فيه لجواز بيع المسجد وغاية ما فيه انما هو تحويل الرحبة مسجداً
والمسجد رحبة-----"

(Elaa-us-Sunan, Vol.13, page 209, published by Idara Al-Quran Wall - Uloom-ul-Islamia, Karachi).

It means that the order passed by Hazrat Umar (r.a.a) does not provide any justification for sale of a mosque; that its real purpose was to change the courtyard into a mosque and the mosque into courtyard. Meaning thereby that some internal change or modification was made in the mosque but it remained at the same site.

64. The famous historian Tabri has reported the incident of the theft and the action taken in the matter with greater details. He writes as under:---

وقدبنى سعد فى الذين خطوا القصر قصرا" بحيال محراب مسجد الكوفة اليوم- فشيده وجعل فيه بيت المال وسكن ناحيته ثم ان بيت المال نقب عليه نقبا" - واخذ من المال وكتب سعد بذلك الى عمر ووصف له موضع الدار وبيوت المال من الصحن بمايلى ودعة الدار فكتب اليه عمر، ان انتقل المسجد حتى تضعه الى جنب الدار- واجعل الدار قبلة فان للمسجد اهدا" بالنهار وبالليل وفيهم حصن لمالهم فنقل المسجد واراغ بنيانه فقال له دهقان من اهل همدان يقال له روزبه بن بزرجهر، انا ابنه لك وابنى لك قصرا" خاصتهما ويكون بنيانا واحدا" فخط قصر الكوفة على ماخط عليه ثم انشاء من نقض (٢) اجر قصرا كان للا كاسرة فى ضواحي الحيرة على مساحة اليوم- و لم يسمع به ووضع المسجد بحيال بيوت الاموال منه الى منتهى القصر يمينه على القبلة ثم مد به عن يمين ذلك و الى منقطع رحبة على بن ابى طالب عليه السلام والرحبة قبلة ثم مد به فكانت قبلة المسجد الى الرحبة و يمينه القصر- (تاريخ طبرى' جلد نمبر 4' صفحه 46)

It may be translated as under:---

"Saad (سعد بن وقاص) got his house/ castle built in front of arch of the Kufa Mosque, got it well-built and made Baitul Maal in it. He resided on one side of it. Then Baitul Maal was burgled and some valuable property was taken therefrom. Saad wrote about it to Hazrat Umar (r.a.a) and described to him the location of the residential house and the treasury (بيوت الاموال) in the courtyard which was adjacent to the house. Hazrat Umar (r.a.a.) wrote to him, change the mosque so that it be brought to the side of the house, keeping the house towards Kibla of the mosque because mosque was frequented by persons during the day and the night. Hence there was security for goods/property of Baitul Maal. So the mosque was changed and its foundations were craftly made. An important person or Raees from Hamzaan named (روزبه بن بزرجهر) said that he would undertake the construction and improve both (buildings) in such a way as to make the construction of the building on one foundation. So lines of demarcation for (قصر الكوفة) were drawn....and the mosque was placed in front of (بيوت الاموال) which extended up to the castle on the right side of the Kibla. Then, it was extended towards the right side up to a place

known Rahaba Ali bin Abi Talib. The "Rahaba" was towards the Kibla of the mosque. He again extended it. The Kibla of the Mosque was towards the "Rahaba" and right side of the residential house."

The version given by Tabri shows that Baitul Maal consisting of several rooms is adjacent to the residential palace of Hazrat Saad (r.a.a) and that the same is in front of Mehrab of the mosque. After the incident of theft, Hazrat Umar (r.a.a) wrote that the mosque be changed so that it may reach the side of the residential palace bringing it towards the Kibla of the mosque. The object was to make two buildings adjacent for greater safety of the Baitul Maal making it one construction. However, according to Tabri the residential palace and Baitul Maal were extended bringing the Baitul Maal towards Kibla of the mosque.

65. At this stage it will be appropriate to examine the meaning of the word (انقل) used in both the narrations coming from Ibn Taimia and Tabri. This word is derived from (نقل) which means (حول) and (اصلاح). This word (حول) means change from one place to another and (اصلاح) means improvement or correction of fault (Aqrabul Maari, Vol.II, page 1339, published art Qum, Iran). The word (نقل) and (حول) in the context of change from one place to another can apply to movable things which are capable of being shifted. As regards immovable property like a piece of land fixed in earth it can only mean some change, extension, modification or improvement. The word (اصلاح) means mending, repair, improvement, betterment and correction (Qamoos-ul-Asri, 1947 Edition, page 373, published in Egypt). Hence in the context of both the narrations the words (انقل) would mean change, extension, modification or improvement so as to bring the Baitul Maal towards Qibla of the Mosque, keeping the original site of the mosque intact. This inference legitimately flows from the facts of the two narrations and is otherwise consistent with the letter and spirit of the Injunctions of the Holy Quran and Sunnah of the Holy Prophet (s.a.w.s). Hazrat Umar (r.a.a) himself being a great Muslim Jurist and well-versed in the teachings of Islam, could not have possibly passed an order in violation of the same. Hence, even if we presume that he had passed the order (انقل المسجد) we must construe it in harmony with the Injunctions of the Holy Qur'an and Sunnah of the Holy Prophet (s.a.w.s). His order can reasonably be construed to convey the meaning of change, extension and modification of the structure, without abandoning the mosque or re-locating it at some other site.

66. The city of Kufa was founded in 17 Hijra under the orders of Hazrat Umar (r.a.a) and big piece of land was earmarked and dedicated for mosque which could accommodate as many as 40,000 persons. This was the central Jamia Mosque of the city. While demarcating the limits of the mosque a person was made to stand in the middle of the place who threw arrows on the right, left, front and the back sides. The points up to which the arrows could reach, determined the outer limits of the mosque on each side. Houses were allowed to be constructed beyond the said points. It is so stated in the history book of Tabri

(Urdu Edition, published by Nafees Academy, Karachi, Vol.III page 58) and Mojamul Baldan by Allama Yaqootul Hamvi (Vol.16, page 491). Such a huge mosque could not be immediately built upon. In the beginning only the site was demarcated and on the front side a square shaped shed was constructed. The residential house of Hazrat Saad Bin Waqas was constructed on the front side of the mosque. The Baitul Maal was also established in a part of the Governor's House. In-between the mosque and the residential palace/Baitul Maal there was an open space measuring 200 Haath or about 300 feet. After the incident of theft the mosque or the Baitul Maal or both were extended and the vacant place was covered so as to make the whole construction look like one building. It is mentioned in the narration of the incident by Tabri that the architect named Rozba bin Bazurmehr had stated that he would construct the residential palace and the mosque and join them together so that both may look like one building. Hence, the original site of the mosque was not abandoned. It was only extended so as to bring the Baitul Maal adjacent to the mosque towards the Qibla for its greater safety. The above view is supported by Allama Shibli Naumani who writes as under:---

”حضرت عمر رضی اللہ عنہ اگرچہ تعمیر کے باب میں نہایت کفایت شعاری کرتے تھے لیکن بیت المال کی عمارتیں مستحکم اور شاندار بنوائیں۔ کوفہ میں بیت المال کے لئے اول ایک محل تعمیر ہوا جس کو روذبہ ایک مشہور مجوسی معمار نے بنایا تھا اور جس کا مصالحہ خسروان فارس کی عمارت سے آیا تھا۔ لیکن جب اس میں نقب کے ذریعے سے چوری ہوئی تو حضرت عمر رضی اللہ عنہ نے سعد بن وقاص رضی اللہ عنہ کو لکھا تھا کہ مسجد کی عمارت بیت المال سے ملا دی جائے۔ کیونکہ مسجد نمازیوں کی وجہ سے ہمیشہ آباد اور ہر وقت لوگوں کا مجمع رہے گا چنانچہ سعد بن وقاص رضی اللہ عنہ کے حکم سے روذبہ نے بیت المال کی عمارت کو اس قدر وسیع کیا کہ مسجد سے مل گئی اور اس طرح چوری وغیرہ کی طرف سے اطمینان ہو گیا۔“
(”الفاروق“ صفحہ 348-349)

At page 360 of the same book Allama Shibli Naumani mentioned that the mosque of Kufa was a big mosque which could accommodate 40,000 persons and that the Government House including Baitul Maal was situated at a distance of 200 Haath or about 300 feet from the mosque. He further writes:---

”چند روز کے بعد بیت المال میں چوری ہو گئی چونکہ حضرت عمر رضی اللہ عنہ کو ہر ہرجائی واقعے کی خبر پہنچتی تھی۔ انہوں نے سعد رضی اللہ عنہ کو لکھا کہ ایوان حکومت مسجد سے ملا دیا جائے۔ چنانچہ روذبہ نامی ایک پارسی معمار نے جو مشہور استاد تھا اور تعمیرات کے کام پر معمور تھا۔ نہایت خوبی اور موزونی سے ایوان حکومت کی عمارت کو بڑھا کر مسجد سے ملا دیا۔“ (صفحہ 361-360)

In under encyclopaedia (دائرہ معارف الاسلامیہ) Vol.20, page 601, published by University of the Punjab, it has been mentioned that the city of Kufa was founded by Saad Bin Abi Waqas in 17 Hijra, the mosque was situated in the middle of the city, it was square in shape, could accommodate 40,000 persons, that a shed was built on the Southern side and the Darul Amara (the

Government House) near the mosque was subsequently included in the mosque under the orders of Hazrat Umar (r.a.a). The revelant extracts from the book read as under:--

”دار الہارہ جو مسجد کے پاس ہی تھا بعد میں حضرت عمر ؓ کے حکم سے مسجد میں شامل کر لیا گیا۔“

(Urdu Encyclopaedia (دائرہ معارف اسلامیہ) Vol.20, page 601)

”گوذی مسجد کو حضرت عمر ؓ کے حکم سے حضرت سعد ؓ نے اتنا وسیع کر دیا کہ وہ دار الہارہ کی عمارت سے ملحق ہو گئی۔“

(Urdu Encyclopaedia (دائرہ معارف اسلامیہ) Vol.20, page 624)

Again, the mosque was extended by Ziad during the reign of Hazrat Amir Mavia (r.a.a) and then it could accommodate 60,000 persons.

67. Thus it is fully established that the mosque remained at its original site and either some internal change was made in the mosque to bring Bait-ul-Maal towards the Qibla or it was brought adjacent to the Bait-ul-Maal by extension of the mosque and the Bait-ul-Maal. I am fortified in my view by the opinion expressed by the famous Muslim Jurist Ibn-e-Hamam in his commentary of Hedaya known as "Fathul Qadeer" (Vol.10, page 237). He rejected Ibn-e-Taimia's argument regarding shifting of the mosque and said that the argument of Ahmad (Ibn-e-Taimia) in respect of letter of Hazrat Umar (r.a.a) is of no use because it was possible that he might have ordered establishment of Bait-ul-Maal in the mosque. He added that his argument regarding shifting of the mosque stands rejected by the well-known tradition of the Holy Prophet (s.a.w.s.) to the effect that a property dedicated in the name of Allah cannot be sold, gifted or inherited. The object of the said tradition is to rule out transfer of title or the Wakf property and to keep it intact perpetually.

68. It is well-settled that in the presence of a clear tradition of the Holy Prophet (s.a.w.s.), the view of a companion of the Holy Prophet (s.a.w.s) or any Muslim Jurist are not to be preferred over the same. According to Ibn-e-Taimia, Hazrat Ibn-e-Abbas (r.a.a) said, "Very nearly stones would be pelted upon you; I say that this is the tradition of the Holy Prophet (s.a.w.s.) and you refer to the sayings of Abu Bakar (r.a.a) and Umar (r.a.a)". Imam Ahmad Bin Hambal said, "I am surprised at those who know a correct tradition of the Holy Prophet (s.a.w.s.) but lean in favour of the opinion of Hazrat Sufiyan (r.a.a)". Allama Sheikh Abdur Rehman Bin Hassan, author of "Fathul Majeed" (Commentary of Kitab-ut-Toheed by Sheikh Muhammad bin Abdul Wahaab) says:--

”پس ثابت ہوا کہ جو شخص آنحضرت ﷺ کی صحیح حدیث کے ہوتے ہوئے کسی عالم یا امام کے قول کو ترجیح دیتا ہے، اس سے انکار کرنا واجب ہے۔“

He further says:---

”کتاب وسنت کے احکام واضح ہو جانے کے بعد اس بارے میں کسی کو اختلاف نہیں کہ قرآن وحدیث کے مقابلے میں آئمہ کے قول کو چھوڑ دینا چاہئے۔ البتہ مقلدین کا گروہ اپنی بات پر مصر رہتا ہے، خواہ کتاب وسنت کی مخالفت ہی ہو رہی ہو۔ کیونکہ یہ لوگ کتاب وسنت سے بے بہرہ ہیں۔ حقیقت یہ ہے کہ یہ لوگ قرآن وحدیث سے کوئی شغف اور محبت نہیں رکھتے بلکہ صرف اپنے امام کے قول کو تسلیم کرتے ہیں۔ افسوس اس بات پر ہے کہ یہ لوگ سمجھتے ہیں کہ وہ آئمہ کرام کی اتباع کر رہے ہیں حالانکہ حقیقت میں یہ لوگ آئمہ کرام کی مخالفت میں لگے ہوئے ہیں۔ اور ان کی راہ سے بالکل دور ہیں۔“

(ہدایت المستفید، جلد دوم، صفحہ 1050)

Therefore, the opinion of Imam Ibn-e-Taimia which appears to be in conflict with the injunctions of the Holy Qur'an and Sunnah of the Holy Prophet (s.a.w.s.) cannot be given any weight in respect of the controversy regarding shifting or abandonment of a mosque or use of its site for any other purpose.

69. I may observe here that despite eminence of Sheikh-ul-Islam, Ibn-e-Taimia, as a great Muslim, Jurist, a number of his juristic opinions were considered to be erroneous. In this connection Syed Abdul Hassan Nadvi writes:

”ان ”اجتادات“ میں وہ کبھی کبھی منفرد بھی نظر آتے ہیں۔ ان سے غلطیاں بھی ہوئی ہیں۔ جیسے کہ ہر غیر معصوم سے ہوتی ہیں۔ ان کے دلائل ہر مسئلہ میں ضروری نہیں کہ قوی اور واجب التسلیم ہی ہوں۔“

(تاریخ دعوت وعزیمت، جلد دوم، صفحہ 132-133، مطبوعہ اعظم گڑھ، 1987)

It means that, "In his Ijtihad, at times he appears to be unique. He also committed errors like any other person not free from fault. It is not necessary that on every issue his arguments be strong and acceptable."

Abul Hassan Nadvi has based his view on the opinion of Hafiz Ibn-e-Hajar Asqalani, expressed in Fathul Bari, Commentary of Sahi Bukhari. The same is reproduced below:---

”جن مسائل میں وہ بر سر حق ہیں اور وہی تعداد میں زیادہ بھی ہیں۔ اس میں ان سے استفادہ کرنا چاہئے اور ان کی بناء پر ان کے حق میں دعائے خیر کرنی چاہئے جن مسائل میں ان سے غلطی ہوئی ان میں ان کی تہلیل نہیں کرنی چاہئے۔“

It means:---

"that the juristic matters in which he was on the right side (and the same are larger in number) one should benefit from him and pray for him. Other matters in which he committed an error he should not be followed."

70. To sum up, the conclusion drawn by Ibn-e-Taimia regarding shifting of the mosque, cannot be accepted for a variety of reasons:---

- (i) The narrations of the incident of theft and the alleged order of Hazrat Umar (r.a.a) to change the mosque have not come down to us through reliable narrators.
- (ii) The inference drawn by Ibn-e-Taimia is neither consistent with the brief facts given in his Majmooa Fatawa nor those reported in Tareekh Al-Tabri. Had the mosque been shifted then the reason stated in the letter of Hazrat Umar (r.a.a) that the mosque is never vacant; is frequented by Muslims for offering prayers and hence there is greater safety of Bait-ul-Maal, would have become irrelevant or redundant.
- (iii) It is reasonably possible to construe that the mosque was extended and brought adjacent to Bait-ul-Maal or if Bait-ul-Maal was already in the mosque (as mentioned by Ibn-e-Taimia) then some internal change or modification was made to bring Bait-ul-Maal towards Qibla of the mosque. If it was outside the mosque then it was brought in the mosque towards the side of the Qibla as opined by Ibn-e-Hamam.
- (iv) Hazrat Umar (r.a.a) being well versed in Islamic Law and Jurisprudence could not have passed any order contrary to the injunctions of the Holy Qur'an and Sunnah of the Holy Prophet (s.a.w.s.). According to the said injunctions, a mosque belongs to Allah; cannot be alienated; has to be permanently maintained and preserved; kept clean for offering prayers; is not to be spoiled or abandoned and has to be respected as being symbol of Allah.
- (v) Rules of Fiqah or Islamic Law are never laid down on the basis of general books of history but are primarily derived from the Holy Qur'an and Sunnah of the Holy Prophet (s.a.w.s.).
- (vi) The facts of the case of theft in Bait-ul-Maal, the supposed order passed by Hazrat Umar (r.a.a) and the action taken in compliance with the same have been briefly reported by Tabri and Ibn-e-Taimia. Their narrations qua the factual position are not consistent with each other. Moreover, all the relevant facts having a bearing on the controversy are not available.
- (vii) The original text of the letter said to have been written by Hazrat Umar

(r.a.a) is not available in any book of Islamic history, life history of Hazrat Umar (r.a.a) or other books of Fiqah particularly books on Fiqah and traditions of the Holy Prophet (s.a.w.s.). Ibn-e-Taimia and Tabri have only quoted some contents of the letter as stated by the narrators.

- (viii) Ibn-e-Taimia follows the Fiqah of Imam Ahmad bin Hambal but the incident of theft and order of Hazrat Umar (r.a.a) find no mention in Musnad Imam Ahmad bin Hambal. Similarly, the view regarding shifting of a mosque from one place to another has not been expressed by Imam Ahmad bin Hambal. Imam Ahmad bin Hambal rather emphasized that Muslims should always follow the Injunctions of Holy Qur'an and Sunnah of the Holy Prophet (s.a.w.s.) and should never prefer a different or contrary view of a companion of the Holy Prophet (s.a.w.s.) or a Muslim jurist.
- (ix) Hanfi Fiqah is based on the juristic opinions and the narrations coming from Hazrat Abdullah-bin-Masood. A large number of his narrations had been reported through his disciples namely Alqama, Nakheeli and Hammaad. They were contemporaries of Imam Abu Hanifa, who belonged to and was based in the city of Kufa. Had the incident of theft in Bait-ul-Maal and the subsequent alleged order of Hazrat Umar (r.a.a) regarding shifting of the mosque been correct then the same must have been known to and narrated by any one of the abovenamed three disciples of Hazrat Abdullah-bin-Masood. However, no such narration has come from any one of them.
- (x) The narration regarding the alleged order passed by Hazrat Umar (r.a.a.) to shift/extend/modify the mosque is conspicuously absent from the authentic books of Ahadis, and other authentic books of history and Fiqah-Umar. The said part of the narration appears to be a mistaken addition or product of the confused state of mind of Al-Masoodi.

71. Now, I will discuss the Fatawa relied upon by the respondents to justify demolition of the old mosque and its shifting to a nearby alternate site. It is noteworthy that on 26-9-1992 Chairman, Mosque Committee, sent letters to different scholars/Muftis to obtain their Fatawa. This letter reads as under:---

جناب عالی!

السلام علیکم ورحمۃ اللہ۔ ارشاد فرمائیے کہ اگر ایک محکمہ کے ملازمین اپنے دفتر کے ایک مقام سے "مسجد" کو شہید کر کے اسے اسی دفتر کے دوسرے مقام میں تعمیر کرنا چاہیں۔ تو اس میں اسلامی مذہبی نقطہ نگاہ سے کوئی مضائقہ تو نہیں۔ آپ کی عالمانہ رائے ہماری راہنمائی کے لئے بہت ضروری ہے۔
(مورخہ 26-6-1992)

Upon this Mufti Abdul Rahman Ashrafi, Mufti Muhammad Hussain Naeemi, Muhammad Maqsood-ul-Hassan, Khateeb, Jamia Masjid Data Darbar, Lahore, Syed Mahmood Ahmad Rizvi and Mufti Muhammad Abdul Qayyum Hazarvi gave their Fatawa to the effect that the old mosque could not be demolished or shifted and must be maintained at its existing site. The copies of the above-referred letters alongwith Fatawa of the Scholars/Muftis, were annexed to the writ petitions as Exh. E, Exhs. E/1 to E/4. The same are also available at pages 165 to 171 of File No.3 from the office of the Deputy Commissioner, Lahore. Probably the Deputy Commissioner was bent upon to pull down and shift the mosque and did not pay any heed to mosque demolished in the darkness of night. During the pendency of the writ petition, the Deputy Commissioner/Chairman of the Mosque Committee and again sent letters to different Scholars/Muftis to obtain their Fatawas. In the first letter existence of the mosque was admitted but in the second letter an impression was given as if the Government employees had started using the place for offering prayers and constructed a mosque without permission of the Government or dedication of the property as Wakf. The contents of the second letter are reproduced below for ready reference:---

محترم علماء کرام۔

السلام علیکم!

ایک ایسی جگہ جو گورنمنٹ کی تھی۔ قریبی دفاتر کے ملازمین نے وہاں تھڑے کی صورت میں نماز کے لئے جگہ بنالی۔ آہستہ آہستہ اس میں وسعت ہوتی چلی گئی۔ حتیٰ کہ اس نے مسجد کی شکل اختیار کر لی۔ اب گورنمنٹ نے قریبی دفاتر کی بنی تعمیر کروائی۔ اور اس کی خواہش ہے کہ مسجد کی تعمیر بھی ہو۔ لیکن مذکورہ جگہ پر بعض اہم وجوہ کی بناء پر مسجد کا تعمیر کرنا دشوار ہے تو کیا حکومت وہاں متبادل جگہ پر مسجد کی تعمیر کر سکتی ہے؟

متبادل جگہ میں مسجد کی تعمیر میں یہ فوائد ہیں:

(۱) مسجد پہلے سے کہیں کشادہ ہوگی۔

(۲) مسجد غیر آباد نہ رہے گی۔ بلکہ پہلے سے بھی زیادہ آباد ہو جائے گی کیونکہ پہلی جگہ اس کے ساتھ محلہ نہیں اب محلہ کے ساتھ متصل ہے۔

(۳) پہلے مقام پر شور وغل زیادہ تھا۔ جو اس کے تقدس کے منافی ہے۔ اس دوسری

جگہ پر ایسا نہیں ہے۔

واضح رہے کہ پہلی جگہ کسی نے مسجد کے لئے وقف نہیں کی تھی محض سرکاری ملازمین نے

اسے جائے نماز بنایا تھا۔

direct bearing on the controversy were not brought to the notice of the Scholars and Muftis. Firstly, it was not mentioned since when the place was being used for offering prayers and when it was converted into an elevated platform. It was also not mentioned that for years together the Provincial Government never objected to the use of the property as a mosque and that after creation of Pakistan it had not only agreed to grant the land free of cost for construction of a mosque but had also partly contributed funds and actively assisted in constructing the mosque at the disputed site. Moreover, in order to mislead the Scholars/Muftis, it was mentioned at the end that the site was not dedicated for purposes of a mosque and that the Government servants had, on their own, started using it for offering prayers. While giving a Fatawa, a Mufti has to ponder over facts and then the law before expressing his juristic opinion decision. The two stages are called (فقر الواقف) (thinking on facts) and (فقر الكلام) (thinking on law or Injunctions of Islam). Had true facts been disclosed in the letter, the Scholars/Muftis would have been in a better position to express correct juristic opinions. It is noteworthy that the respondents first got the mosque demolished on 6-10-1992, the present writ petition was filed on 7-10-1992 which came up for hearing before the Court on 11-10-1992 when the learned Additional Advocate-General (who was present in the Court in connection with some other cases) was called upon by the Court to seek instructions and submit report and parawise comments on behalf of respondent No.2. Thereafter, the Fatawas were obtained during the period from 11-10-1992 to 16-10-1992. Obviously, after having committed the serious act of demolition of the mosque, respondent No.2 deliberately suppressed the true facts in his anxiety to obtain favourable Fatawa for face saving in the matter. It may be mentioned that out of the 14 Fatawa relied upon by the respondents only one Fatwa has come from a Mufti, i.e., Mufti Ghulam Sarwar. The other Fatawa have been given by some Qaris, Khateebis etc. and there is nothing to show that they were qualified or competent to give the Fatawa. Anyhow, the said Fatawa are based on insufficient and wrong facts and cannot be relied upon for resolving the present controversy.

72. As regards the views of the Federal Shariat Court expressed on a reference made by the late President of Pakistan General Muhammad Zia-ul-Haq, it may be said in the very outset that it is not a decision of the Federal Shariat Court given in exercise of its jurisdiction under the law. This is evident from the letter dated 15-5-1982 sent by the then Chief Justice of the Federal Shariat Court to the Military Secretary to the President. The same is reproduced below for ready reference:---

"FEDERAL SHARIAT COURT
ISLAMABAD, 15TH MAY, 1982.

Subject: MOSQUES ILLEGALLY BUILT ON GOVERNMENT LAND

The question involved in the Reference No. 57/1/CMLA/MS (P) dated

23rd, April, 1982 is not within the jurisdiction of this Court as such, since that jurisdiction is limited to determining whether a particular law or custom or usage having the Force of Law is repugnant to the Holy Qur'an and the Sunnah of the Holy Prophet (s.a.w.s).

2. However, in deference to the order of the President of Pakistan the matter was considered by me with the active assistance of Mr. Justice Malik Ghulam Ali and Mr. Justice Pir Muhammad Karam Shah Al-Azhari. The agreed opinion is being forwarded. It may be stated that this note was prepared by Mr. Justice Pir Muhammad Karam Shah Al-Azhari and was agreed upon by the others.

(Sd.)

(AFTAB HUSSAIN),
CHIEF JUSTICE. "

A copy of the above letter is available at page 11 of File No.1 from the Office of the D.C., Lahore (Produced in the Court by the learned A.A.-G). The opinion of the Federal Shariat Court embodied in the "note" was simply meant to guide the State Functionaries or add to their knowledge but did not have a binding effect like the judgment of the Court. Moreover, the opinion of the Federal Shariat Court proceeds on the assumption that the mosques were illegally and unauthorisedly constructed without permission of the Government or dedication of the property as Wakf. However, in the present case, as held above, the mosque was constructed with the implied as well as express permission of the Government. Hence the opinion of the Federal Shariat Court relied upon by the learned A.A.-G. is of no help to the respondents.

73. I need not discuss a large number of Fatawa obtained by the petitioners but may only mention that the Fatawa given by Mufti Muhammad Hussain Naeemi from Lahore, Mufti Muhammad Abdul Ghafoor from Haroonabad, Maulana Abdul Sattar Khan Niazi, Professor Mahmood Ahmad Ghazi, Member, Islamic Ideology Council and the joint Fatwa given by Abdul Malik, Shaikh-ul-Hadis, Markaz Uloom-e-Islamia, Mansoor, Lahore and late Justice Ghulam Ali, Ex-Judge, Federal Shariat Court, fully support the view that once a site becomes a mosque it always remains a mosque and cannot be put to any other use.

74. It has been rightly urged by the learned counsel for the petitioner and the learned amicus curiae that the legality and validity of the action of the respondents regarding demolition and re-location of the mosque and conversion of the old site of the mosque into a grassy plot can be examined on the basis of Articles 2A and 20 of the Constitution of Pakistan. To begin with, it must be remembered that the Constitution of a State is not a book of prayers to be read only for "Baraka". It contains fundamental principles and the law governing it and provides the criteria for the construction, interpretation and validity of legal

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enactments on the consideration of their conformity to the fundamental principles and the law. The Constitution contains provisions relating to the concept, character and objectives of the State, the nature and framework of the Government as well as provision to regulate, distribute and limit the functions of its different departments, the extent and manner of exercise of its sovereign powers for achieving the aspirations and ideals of its people. Pakistan is an Islamic State, ideologically committed and Constitutionally bound to follow the religion of Islam. In the Western political thought, concept of State is religiously indifferent. However, the Islamic Republic of Pakistan is a peculiar ideological State and whether some one likes it or not, it has a religion too. According to Article 2 of the Constitution, the State religion of Pakistan is Islam. This Article being a substantive part of the Constitution, certainly has meaning, purpose and practical utility. It is singularly different from an empty slogan. The purpose is to declare unequivocally that in the State of the Pakistan, the Islamic way of life shall be followed and that it shall be governed in accordance with the Islamic Sharia. The ideals of establishing truly Islamic State and society were embodied in the historic Objectives Resolution adopted by the Constituent Assembly of the Pakistan on 12-3-1949. At one time, it was only a part of the preamble of the Constitution and as held in the case of "Zia-ur-Rehman v. The State PLD 1986 SC 428, was not enforceable. M. Munir, the renowned Jurist and Ex-Chief Justice of the Supreme Court of Pakistan had opined in his book, "Constitution of the Islamic Republic of Pakistan, 1973" that the Objectives Resolution did not have the status or authority as the operative part of the Constitution unless it was incorporated therein and included in its substantive part. The needful was done through Presidential Order No. 14 of 1985 whereby Article 2A was inserted in the Constitution. The said Article reads as under:---

"2A. The Objectives Resolution to form part of substantive provisions.---The principles and provisions set out in the Objectives Resolution reproduced in the Annex are hereby made substantive part of the Constitution and shall have effect accordingly."

Although, the heading of the Article says that "Objectives Resolution" is to form part of substantive provisions, in the operative part, the principles and provisions set out therein were really made substantive part of the Constitution. It was added that the said principles and provisions "shall have effect accordingly". The principles and provisions set out in the Objectives Resolution are that sovereignty over the entire universe belongs to Allah alone; that the State of Pakistan shall exercise the authority delegated by Allah within the limits prescribed by Him, that the said authority is a sacred trust; that the sovereign State of Pakistan shall be governed by a Constitution; that the State power and authority shall be exercised through the chosen representatives of the people; that the principles of democracy, freedom, equality, tolerance and social justice as enunciated by Islam shall be observed; that Muslims shall be enabled to order their lives in the individual and collective spheres in accordance with teachings

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and requirements of Islam as set out in the Holy Qur'an and Sunnah; that the citizens of Pakistan shall have fundamental rights qua equality of status, equality of opportunity, equality before the law, social, economic and political justice, freedom of thought and expression, belief, faith, worship and association (subject to law and public morality). The minorities shall have adequate freedom to profess and practise their religion and develop their cultures, the legitimate rights of the minorities shall be safeguarded; the independence of judiciary will be fully secured; the integrity of territories of the Federation of Pakistan, its independence and all its sovereign rights, over sea and air shall be safeguarded. By adding Article 2A, the Constitution-maker clearly intended that the above-referred principles and provisions be given effect to by the three organs of the State, i.e. the Executive, the Legislature and the Judiciary. We need not confine ourselves to the precise language employed in the Resolution but must ascertain the true intent of the law-makers and give effect to the same Lord Denning in his book "The Discipline of Law" says:--

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"A judge, believing himself to be fettered by the supposed rule that he must look to the language and nothing else, laments that the draftsmen have not provided for this or that, or have been guilty of some or other ambiguity. It would certainly save the Judges trouble if Acts of Parliament were drafted with divine prescience and perfect clarity. In the absence of it, when a defect appears a Judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament, and he must do this not only from the language of the statute, but also from a consideration of the social conditions which gave rise to it, and of the mischief which it was passed to remedy, and then he must supplement the written words so as to give 'force and life' to the intention of the Legislature."

Obviously, the intention behind Article 2A was to elevate the Objectives Resolution from the position of a mere "pious wish" to the higher pedestal of substantive Constitutional law thereby making the Injunctions of Islam as the supreme law of the land. Hence, the change was real and purposeful. Therefore, instead of finding fault with the language employed in the Objectives Resolution, we should adopt "purposeful approach" (in the words of Lord Diplock to give effect to the legislative intent. In this context, Lord Denning further says, "It is no longer necessary for Judges to wring their hands and say "there is nothing we can do about it". Whenever the strict interpretation of a statute gives rise to an absurd and unjust situation, the Judges can and should use their good sense to remedy it --- by reading words in, if necessary --- so as to do what Parliament would have done, had they had the situation in mind." (The Discipline of Law, page-16).

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Notwithstanding the fact that in the changed circumstances a few words and expressions used in the Objectives Resolution appear to be inapt, on reading it as a whole, its real intention can be gathered and given effect to. If an object

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contemplated therein had been achieved before insertion of Article 2A, as for example, the Constitution had been framed or a democratic political set-up established, fundamental rights secured in the Constitution, then a fresh exercise to frame another Constitution or establish a new political order or provide fundamental rights was not required. However, the principles deducible from the Objectives Resolution have always to be adhered to by the citizens and the State functionaries. One of the important principles embodied in the Resolution is that the sovereignty over the entire universe belongs to Allah alone and that the State of Pakistan shall exercise its powers and delegated authority through the chosen representatives of the people within the limits prescribed by Almighty Allah". It is important to distinguish between the Constitution and the principles which underlie it. The principles are in one sense more important than the Constitution itself. The form of the Constitution changes but the principles remain". ('British Parliamentary Democracy' by Sydney D. Bailey, page 5 of the Third Edition). Therefore, the principle of sovereignty of Allah and obligation of the Legislature to act within the limits of Allah has always to be followed.

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75. Immediately after his election as the First Caliph of the Holy Prophet (s.a.w.s.) Hazrat Abu Bakar Siddique (r.a.a.) enunciated the principles that all persons are equal before the law, the Caliph is not above the law; that obedience of people to the Caliph or the Government is conditional and that the State authority is to be exercised in accordance with the commands of Allah and his Prophet (s.a.w.s.). He said:---

"Oh people! Now I am elevated as ruler over you, albeit not the best among you. If I do good, support me; if I err, then set me right. To tell truth to a person commissioned to rule is faithful allegiance; to conceal and lie is treason. In my sight the powerful and the weak are alike. By Allah; he that is weaker among you, shall be strongest in my sight until he conforms to law and I have taken from him that which he hath wrested. Never shrink from Jihad; the nation which forsakes Jihad will get disgraced. Obey me as long as I obey God and His Apostle (s.a.w.s.); and if I withdraw from God and his Apostle, you withdraw from me, as in that case obligation of obedience on your part to me terminates."

"(Abu Bakar the Caliph" by Abdul Aziz, p.66, published by Ghazanfar Academy, E/5 Modern Colony, Karachi). Being bound to act within the limits prescribed by Allah, Majils-e-Shoora or Parliament of Pakistan does not enjoy sovereignty like the British Parliament. Bailey says 'This concept of Parliamentary sovereignty is of vital importance and distinguishes Britain from most other democratic countries. Parliament may enact any law it likes, and no other body can set the law aside on the ground that it is unconstitutional or undesirable'. (The British Parliamentary Democracy page 6). Hence, it is said by way of illustration that the British Parliament can do anything except to turn a

man into a woman or vice versa and may enact a law that all blue-eyed babies be killed, though it is added that before passing such a law the members of the Parliament must go mad. A few years ago, the British Parliament demonstrated its 'sovereignty' by enacting a law hereby unnatural act or sodomy was legalized (with some conditions). In Pakistan, the members of the Parliament are not the monarchs of all that they survey. They can frame laws while remaining within the four corners of the Islamic Shariah to enable Muslims individually and collectively to order their lives in accordance with the teachings of Islam as set out in the Holy Qur'an and Sunnah of the Holy Prophet (s.a.w.s.)."

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76. When we say that after insertion of Article 2A in the Constitution the principles and provisions of the Objectives Resolution Including Injunctions of Islam, have become substantive part of the Constitution, the status or authority of Injunctions of Islam is not relegated to that manmade laws. The Injunctions of Islam as set out in the Holy Qur'an and Sunnah of the Holy Prophet (s.a.w.s.) are the supreme law of the land and all manmade laws have to conform to the same. It is significant to mention that laws inconsistent with fundamental rights guaranteed under the Constitution are void by virtue of the provisions of Article 8 of the Constitution. Therefore, it can be ruled without any hesitation that laws inconsistent with the supreme law of the land, i.e. Injunctions of Islam, are also void. The supremacy of the Divine Law was emphasized by Sir William Blackstone in his book, "Commentary on the Laws of England". He opines that all human laws depend upon foundations; the law of nature and the law of revelation and adds that no human laws should be suffered to contradict these. He adds, "There are, it is true, a great number of indifferent points, in which both the Divine laws and the natural leave a man at his own liberty; but which are found necessary for the benefit of society to be restrained within certain limits. And herein it is that human laws have their greatest force and efficacy for with regard to such points as are not indifferent, human laws are only declaratory of, and act in subordination to the former. To instance, in the case of murder; this is expressly forbidden by the divine, and demonstrably by the natural law; and from these prohibitions arises the true unlawfulness of this crime. Those human laws that annex a punishment to it; do not at all increase its moral guilt, or superadd any fresh obligation in for conscientious to abstain from its perpetration. Nay, if any human law should allow or enjoin us to commit it, we are bound to transgress that human law, or else we must offend both the natural and the Divine. But with regard to matters that are in themselves indifferent, and are not commanded or forbidden by these superior laws; here the inferior Legislature has scope and opportunity to interpose, and to make that action unlawful which before was not so."

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("Commentary on the Laws of England, Vol.I, p. 29).

A British Author and Professor Paul Johnson (author of the famous

book "Modern Times") writes in his article titled "Why I must Believe in God":---

"While writing Modern Times, I formed the unshakable conviction that man without God is a doomed creature. The history of the 20th Century proves the view that as the vision of God fades, we first become mere clever monkeys; then we exterminate one another.

It is a terrifying prospect. But the restoration of that vision of God can arrest it. Society as a whole will be less self-destructive if it stands in awe of moral rules which cannot be changed at the whim of congresses or parliaments or central committees, but which owe their authority to God."

(Readers' Digest, August 1985, page 88).

78. Now I may refer to a few judgments of the Hon'ble Supreme Court of Pakistan in which the provisions of Article 2A have been discussed. In the case of "Mian Aziz A. Sheikh v. The Commissioner of Income-tax, Investigation Lahore" (PLD 1989 SC 613) the Hon'ble Supreme Court was pleased to hold as under:---

"In the context of the present case, neither the Legislature, under the command contained in Article 227(1) has the power to enact a law in any field including those relating to taxes, which is repugnant to Injunctions of Islam; nor any other functionary including the Income-tax Authorities has any such power to lay down any un-Islamic rule, which has a force of law."

On the above findings, it was further held that in properly instituted proceedings superior Courts could strike down a rule of law, both under the general mandate contained in clause (1) of Article 227 as well as Article 2A of the Constitution read with Objectives Resolution. In the case of "Hakim Khan and 3 others v. Government of Pakistan through Secretary Interior and others" (PLD 1992 SC 595), it was held that notwithstanding the insertion of Article 2A in the Constitution, the role of the Objectives Resolution has not been fundamentally transformed from the role of "Beacon light" to guide the Constitution-makers to formulate such provisions for the Constitution which reflect the ideals and the objectives set forth therein and that Article 2A was not self-executing and required legislation to make it operative. It was further held that if any Article of the Constitution was in conflict with Article 2A, the appropriate procedure was to have it amended in accordance with the prescribed provisions of the Constitution.

79. A different note was struck by the Supreme Court of Pakistan in the case of Allah Dad v. Mukhtar and another (1992 SCMR 1273). The Court was pleased to approve the views expressed in the judgment reported as Qamar Raza

Mst. Tahira Begum (PLD 1988 Karachi 169) and Muhammad Sarwar and Mst. Shahida Parveen v. The State (PLD 1988 FSC 42), in which it was held that after insertion of Article 2A in the Constitution, a superior Court was competent to declare a law ultra vires the Constitution if found to be violative of Injunctions of Islam. The relevant paras. from the judgment are reproduced below:---

"12. The legal effects of Article 2A have been thoroughly examined in the case of Qamar Raza referred to above, and it was held therein that since the contents of the Objectives Resolution have been made a substantive part of the Constitution, the superior Courts can declare a law ultra vires the Constitution if it is found to be violative of the Injunctions of Islam. It was further held in the case of Qamar Raza that ineffectiveness of Talaq in the absence of a notice to the Chairman, as envisaged by section 7 of the Family Laws Ordinance, is against the Injunctions of Islam.

13. This view of the Karachi High Court was also upheld and affirmed by the Federal Shariat Court in the case of Muhammad Sarwar and Mst. Shahida Parveen v. The State (PLD 1988 FSC 42) and it was on the basis of these judgments that the learned Trial Court in this case dispensed with the requirements of section 7 of the Family Laws Ordinance. The impugned judgment of the Federal Shariat Court in this case has upheld the decision of the Trial Court and placed its reliance again on the cases of Mirza Qamar Raza and Muhammad Sarwar referred to above.

14. We have gone through the well-considered judgment of the Karachi High Court in the case of Mirza Qamar Raza and have found that judgment is based on very sound reasoning, and the impugned judgments based on the law laid down by it need no interference by this Court, especially in a case of acquittal like the one in hand."

80. Against the view expressed in Hakim Khan's case was departed from by the honourable Supreme Court in the case of "Zaheeruddin and others v. The State and others" (1993 SCMR 1718). In this case, the Court went far ahead and held that the power of judicial review of the superior Courts was enhanced and that adoption of Objectives Resolution in form of Article 2A meant adoption of the Injunctions of Islam as the real, effective and positive law of the land. The relevant part of the judgment is reproduced below:---

"It is thus clear that the Constitution has adopted the Injunctions of Islam as contained in Qur'an and Sunnah of the Holy Prophet (s.a.w.s.) as the real and the effective law. In that view of the matter, the Injunctions of Islam as contained in Qur'an and Sunnah of the Holy Prophet (s.a.w.s.) are now the positive law. The Article 2-A, made

effective and operative the sovereignty of Almighty Allah and it is because of that Article that the legal provisions and principles of law, as embodied in the Objectives Resolution, have become effective and operative. Therefore, every manmade law must now conform to the Injunctions of Islam as contained in Qur'an and Sunnah of the Holy Prophet (s.w.a.s.). Therefore, even the Fundamental Rights as given in the Constitution must not violate the norms of Islam."

In other case reported as *Mst. Kaneez Fatima v. Wali Muhammad and another* (PLD 1993 SC 901), it was held that an existing law could not be declared to be void on the basis of Article 2A of the Constitution but the same were to be interpreted on the basis of the principles of Islamic Law. The relevant part of the judgment reads as under:---

"In this context it may be observed that while interpreting Constitution, enactments, rules and regulations having the force of law and examining orders, acts and actions of Government functionaries/authorities the Court is competent to apply well-reconginsed principles of Islamic Common Law and such interpretation which is in conformity with the Injunctions of Islam. In the fields not occupied by statutory dispensation, principles of Islamic Common Law or principles in confirmity with Injunctions of Islam can be pressed into service."

In the case of "*Government of Sindh through Chief Secretary to Government of Sindh, Karachi and others v. Sharaf Faridi and others*" (PLD 1994 SC 105) the honourable Supreme Court was pleased to refer to the principle of independence of the judiciary appearing in the Objectives Resolution as well as the fact that the same had been made a substantive part of the Constitution through Article 2A. In the case of "*Sardar Muhammad Muqeen Khoso v. President of Pakistan*" (PLD 1994 SC 412) after noting the fact that the Objectives Resolution had become substantive part of the Constitution, the Court highlighted the principle embodied therein that sovereignty over the entire universe belongs to Almighty Allah alone and that the authority to be exercised by the people of Pakistan through their chosen representatives within the limits prescribed by Him, is a sacred trust and that an abuse of position on the part of a chosen representative would amount to breach of the above sacred trust entailing heavenly and wordly punishment. Again in the case of "*Government of N.-W.F.P. through Chief Secretary and another v. Muhammad Irshad and 3 others*" (PLD 1995 SC 281) the Hon'ble Supreme Court referred to the principle embodied in the Objectives Resolution that in Pakistan, State power and the authority shall be exercised by the chosen representatives of the people. Referring to clause (6) of Article 247 of the Constitution, it was held:---

"The clause when read with the Objectives Resolution places a special responsibility on the President and also on the Governor in respect of

the Area. The extraordinary power that has been vested in them must be exercised in a manner that would facilitate the introduction of representative administration in those Areas and thus bring them at par with the other parts of Pakistan. Any legislative and administrative measure which obstructs or delays this ultimate goal must be held to be beyond the bounds of this power."

In the recent case of *Al-Jehad Trust v. Federation of Pakistan* (PLD 1996 SC 363) the Hon'ble Supreme Court of Pakistan was pleased to hold that "what is very important in this context is the fact that Article 2A was inserted in the Constitution by P.O. No.14 of 1985 and made the substantive part of the Constitution which blends the Constitution with the spirit of Islam".

81. The trend of most of the above precedents shows that a real change has been made after insertion of Art.2A in the Constitution and that now the Injunctions of Islam as set out in the Holy Qur'an and Sunnah of the Holy Prophet (s.a.w.s.) are the real, effective and positive law of the country; that the superior Courts can competently examine the validity of manmade laws or orders, acts and actions of State functionaries on the basis of Injunctions of Islam the supreme law of the country.

82. Under Article 20 of the Constitution, every citizen has the right to profess, practise and propagate his religion and to establish, maintain and manage his religious institutions (subject to law, public order and morality). Article 20 reads as under:---

"Freedom to profess religion and to manage religious institutions.---
Subject to law, public and morality---

(a) every citizen shall have the right to profess, practise and propagate his religion; and

(b) every religious denomination and very sect thereof shall have the right to establish, maintain and manage its religious institutions."

The use of the words "religious denomination" and "sect" does not mean that the right conferred under sub-Article (b) of Article 20 can be exercised only by a religious denomination or sect collectively. A religious denomination or a sect thereof is composed of persons who may establish, maintain and manage their religious institutions individually or collectively. The above-quoted Article of the Constitution has to be interpreted in the light of the well-recognized principles and rules of the Islamic law, as held in the case of *Mst. Kaneez Fatima*, quoted above.

83. A mosque is a vitally important religious institution of a Muslim society which is essential for practising Islam. Any act done by any person or a State functionary which obstructs the establishment, maintenance or management of a mosque really deprives the Muslims using the said mosque, practise their

religion. Such an act is also violative of the Injunctions of the Holy Qur'an and Sunnah of the Holy Prophet (s.a.w.s.) is well recognized principle of the Islamic law and jurisprudence that once a mosque always a mosque and that its site cannot be abandoned, changed, alienated or re-located at another place. Therefore, the actions of the respondents in demolishing the mosque, stopping the petitioners and other Muslims from using the original site of the mosque for offering prayers and re-locating it at a nearby site amount to stopping them from establishing, maintaining and managing their religious institution. Their actions being violative of fundamental rights secured under Article 20 of the Constitution, are without lawful authority and of no legal effect. KK

84. It is regrettable that Mr. Javed Mahmood, Ex-Deputy Commissioner, Lahore who was also the Chairman of the Mosque Committee at the relevant time did not protect the interests of the mosque and decided to undo an old mosque in an arbitrary and somewhat "dubious" manner. A number of Muftis and eminent religious scholars in their Fatawa dated 26-9-1992 had made it clear to him that the old mosque could neither be demolished nor re-located at another site. The petitioners alongwith 50 respectables of the locality had also met the Deputy Commissioner in the form of a delegation and requested him not to demolish and shift the mosque and the Madrassa whereupon he gave an undertaking that keeping in view the wishes and sentiments of the people the mosque would not be demolished. In this connection a news item appeared in the daily "Dawn" and some other newspapers. The above facts regarding the petitioners' meeting with the Deputy Commissioner and his assurance were duly stated in paras. 6 and 7 of the writ petition but were not denied in the comments submitted by the Deputy Commissioner and would be deemed to have been admitted.

85. The news item published in the daily "Dawn" dated 4-10-1992 is reproduced below for ready reference:---

"D.C. ASSURES MOSQUE WOULD NOT BE DEMOLISHED."

Bureau Report: Lahore Oct. 3: The Deputy Commissioner Lahore reportedly gave an assurance to a deputation on Saturday that the Jamia Masjid in the premises of the Lahore District Courts would not be demolished."

It is not understandable as to what prompted the then Deputy Commissioner to ignore the Fatwa dated 26-9-1992 and violate even his own solemn commitment that the mosque shall not be demolished. The deliberate act of demolition of the mosque, without caring for the Injunctions of Islam and sentiments of Muslims, prima facie, smacks of mala fides. The questions whether the ex-Deputy Commissioner and other persons, who had either abetted or committed the offences of trespass into and demolition of, the mosque, had acted in conspiracy with the foreign elements, got video cassette of the demolition work prepared LL

and provided the same to the Indian authorities need thorough probe and inquiry. The demolition of the Lahore Mosque had synchronised with an inauspicious set of circumstances prevailing in India in the shape of fury of fanatic Hindus for demolishing the historic Babri Mosque. In this background the ex-Deputy Commissioner and even other persons connected with demolition of the mosque cannot be heard to say that they had no knowledge that the demolition of the mosque would injure religious feelings of Muslims. The act of desecration and demolition of the sacred house of Allah is an attack on the faith of Muslims and "it must be appreciated that in that part of the world faith is still the most precious thing to Muslim believer" (quoted from the judgment of the Hon'ble Supreme Court in Zaheer-ud-Din's case: 1993 SCMR 1718: The Qur'anic verdict about those who spoil mosques (by demolition or otherwise) is embodied in Verse No.2/114 of the Holy Qur'an. Apart from condemning them as being "most unjust" Allah has further declared: **لَهُمْ فِي الدُّنْيَا خِزْيٌ وَلَهُمْ فِي الْآخِرَةِ عَذَابٌ عَظِيمٌ** (for them there is disgrace or ignominy in this world and also awesome suffering in the world hereafter). Hence the ex-Deputy Commissioner and other persons connected with the offence must face the consequences of their wrongful act.

86. I, therefore, direct the S.H.O. P.S. Lower Mall, Lahore to register a criminal case under sections 295 and 297, P.P.C. (on the written or verbal report of any one of the petitioners) against Javed Mahmood, the then Deputy Commissioner, Lahore and Chairman of the Mosque Committee (now posted as Executive Director (Personnel, A.D.B.P., Head Office, Islamabad) and all other persons who had either committed or abetted the offences of trespass into or demolition of the mosque with the knowledge that by their wrongful acts religious feelings of the petitioners and other Muslims would be injured.

87. Keeping in view the importance of the case, the I.-G. Police, Punjab, all entrust its investigation to some honest and senior police officer, not below the rank of S.P. The investigating officer shall submit brief monthly reports about the progress of the investigation to the Registrar of this Court.

88. I am constrained to observe that the sentence provided for an offence under section 295 of the P.P.C. (for injuring or defiling a place of worship with intent to insult the religion of any class) is only imprisonment up to two years or fine or both, which is inadequate and does not commensurate with the gravity of the offence. Likewise, the sentence for committing trespass into places of burial or worship is imprisonment up to one year or fine or both which is also low and inadequate. In either case, an offender may be let off with the sentence of fine alone. It is noteworthy that the offence of defiling the National Flag under section 123(b) of the P.P.C. is punishable with imprisonment up to three years or fine or both but the sentence for defiling the sacred House of Allah provided under section 295 of the P.P.C. is lesser. The malicious or deliberate act of demolition of a mosque or House of Allah is a grave offence. In the historic event regarding the attempt made by Abrahah, the ruler of Yaman, to demolish

the Holy Kaaba, about 55 days before the birth of the Holy Prophet Hazrat Muhammad (s.a.w.s.), Allah had punished the wrongdoers by putting their entire army to death (Surah Al-Feel, Chapter 30 of the Holy Qur'an). It embodies the lesson that Houses of Allah have to be protected and even an attempt to demolish them provides ample justification to put the offenders to death. Therefore, in my view, the sentence for offence under section 295 of the P.P.C. deserves to be raised to death or imprisonment for life and fine. Likewise, the sentence for offence under section 297 of the P.P.C. also needs to be suitably increased. Moreover, both the offences should be made non-bailable.

89. The Registrar of this Court shall forward a copy of this judgment to the Secretary to the Government of Pakistan, Ministry of Justice and Parliamentary Affairs (Justice Division), Islamabad for taking appropriate steps to amend the law suitably to enhance the sentences under sections 295 and 297 of the Pakistan Penal Code and to make the offences non-bailable.

90. For the foregoing discussion the writ petition is accepted and the respondents' acts of demolition of the disputed mosque, its re-location at another place, conversion of the original site of the mosque into a grassy plot or stopping the petitioners from using the said site for offering prayers are declared to be repugnant to the Injunction of Islam, violative of the petitioners' fundamental right and hence without lawful authority and of no legal effect. The respondents are directed to reconstruct the building of the mosque at the old site within a period of six months from today. If for any valid reason extension of time for construction of the mosque is needed by the respondents they should apply to this Court before the expiry of the period referred to above. Till the building of the new mosque is reconstructed, the petitioners and other Muslims including Advocates, members of the staff from the office of the Deputy Commissioner and the residents of the nearby localities, shall be at liberty to use the site for offering 5 times daily prayers as well as Juma and Eid prayers and may, if necessary, raise temporary construction thereon or make any other suitable arrangement for the said purpose. They shall, however, take care that the construction work is not hindered.

91. Before parting with the judgment I like to place on record my appreciation of the good work done and valuable assistance rendered to the Court by Malik Allah Yar Khan, Advocate, Nawab Saeedullah Khan, Advocate (learned counsel for the petitioners), Mr. Ihsan Sabri, Assistant Advocate-General (learned counsel for the respondents), M/s. Saeed-ur-Rahman Farrukh, Dr. Riazul Hussan Gilani, Malik Muhammad Nawaz, Nazir Ahmad Ghazi, Advocates and Mr. Riaz-ul-Hassan Noori, Juris Consult of the Federal Shariat Court (all of whom appeared as amicus curiae). My thanks are particularly due to Mr. Riaz-ul-Hassan Noori, who provided a large number of rare books to the Court from his own library and whose scholarly assistance has gone a long way to make the present judgment, what it is. Last but not the least, my gratitude is due to Sayed Abdur Rehman Bokhari, Research Officer, Quaid-i-Azam Library,

Lahore, who provided a number of reference books to clarify the principles of the Islamic Law.

M.B.A./H-16/L

Petition accepted.

1997 M L D 383

[Supreme Court (AJ&K)]

Present: Sardar Said Muhammad Khan, C.J., Basharat Ahmad Shaikh and Muhammad Yunus Surakhvi, JJ

AZAD GOVERNMENT OF THE STATE OF JAMMU AND KASHMIR through Chief Secretary---Petitioner

versus

SARFRAZ ALAM and another---Respondents

Civil Petition for Leave to Appeal No.32 of 1996, decided on 16th November, 1996.

(On appeal from the order of the High Court dated 9-5-1996, in Civil Appeal No.66 of 1993).

Azad Jammu and Kashmir Contempt of Court Act, 1993---

---Preamble---Azad Jammu and Kashmir Interim Constitution Act (VIII of 1974), S.42(12)---Petition for leave to appeal filed wherein two respondents were cited---Petitioner initially moved application for deleting name of one respondent and after deletion of his name moved another application for deletion of name of remaining respondent---Effect---Names of both respondents having been struck off, there remained no respondent in petition for leave to appeal---Such vacuum having thus been created, petitioner's case could not proceed further---Question of grant of leave, thus, would not arise---Leave to appeal was refused in circumstances. [p. 384] A

Sardar Rafique Mahamood Khan, Advocate for Petitioner.

Date of hearing: 16th November, 1996.

ORDER

BASHARAT AHMAD SHAIKH, J---This is a petition for leave to appeal from the judgment of the High Court by which certain provisions of the Azad Jammu and Kashmir Contempt of Court Act, 1993 were declared ultra vires.

While hearing a writ petition the High Court of Azad Jammu and Kashmir directed one Sarfraz Alam, Assistant Town Planner of the Mirpur

Development Authority, to visit two disputed plots and to submit a report as to the respective measurements. This order was not implemented within the given time and contempt proceedings were initiated against him. He appeared and tendered unqualified apology for the default and also filed an affidavit that he could not implement the order of the Court due to the death of sister of his immediate boss. During the hearing of the contempt proceedings the High Court observed that certain provisions of the Azad Jammu and Kashmir Contempt of Court Act, 1993 were, prima facie, violative of section 45 of the Azad Jammu and Kashmir Interim Constitution Act, 1974 which confers on the Supreme Court and the High Court the power to punish any person who commits contempt of Court. Therefore apart from the learned counsel for the parties, a notice was issued to the learned Advocate-General and assistance of some senior Advocates was also sought. Ultimately a Full Bench announced its judgment on 9th May 1996. By that judgment some provisions of the Azad Jammu and Kashmir Contempt of Court Act, 1993 were found to be unconstitutional and were declared void. So far Sarfraz Alam is concerned he was let off after accepting unconditional apology.

Azad Government of the State of Jammu and Kashmir acting through the Chief Secretary filed a petition for leave to appeal from the part of the judgment of the High Court by which some provisions of the Contempt of Court Act had been declared unconstitutional. In the petition for leave to appeal two respondents were impleaded, namely:--

- (i) Sarfraz Alam, Assistant Town Planner, Mirpur Development Authority; and
- (ii) Robkar-e-Adalat through Honourable Judge of Full Bench of Azad Jammu and Kashmir High Court, Muzaffarbad.

After filing the petition firstly the name of Sarfraz Alam was struck off and then another application was moved wherein it was prayed that respondent No.2 may be allowed to be deleted. This application has been accepted earlier today by a separate order.

The name of Sarfraz Alam had already been struck off. Now with the deletion of respondent No.2 there remains no respondent in the petition for leave to appeal. In view of the vacuum thus created, the case cannot proceed further. When this was pointed out to the learned counsel for the Government, he could not cite any provision of law or practice of the Court under which an appeal can be heard without there being a respondent. Therefore, the question of grant of leave in the case does not arise. A

The petition for leave to appeal is, therefore, dismissed.

A.A./151/SC (AJ&K)

Leave refused.